English Liberties

Or, The

Free-Born SUBJECT's

Inheritance.

CONTAINING

I. *MAGNA CHARTA*, The *Petition of Right*, The *Habeas Corpus* Act; and divers other most *Useful Statutes*: With Large COMMENTS upon each of them.

II. The Proceedings in *Appeals of Murther*; The Work and Power of *Parliaments*; The *Qualifications* necessary for such as should be chosen to that great Trust. Plain Directions for all Persons concerned in *Ecclesiastical Courts*; and how to prevent or take off the Writ *De Excommunicato Capiendo*. As also the Oath and Duty of Grand and Petty Juries.

III. All the Laws against *Conventicles* and *Protestant Dissenters* with *Notes*, and Directions both to *Constables* and others concern'd, thereupon; And an *Abstract* of all the Laws against *Papists*.

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The Proem

THE Conſtitution of our Engliſh Government (the beſt in the World) is no Arbitrary *Tyranny* like the Turkiſh Grand Seignior's, or the French Kings; whoſe Wills (or rather *Luſts*) diſpoſe of the Lives and Fortunes of their unppy Subjects; Nor an *Oligarchy* where the great es (like Fiſh in the Ocean) prey upon, and live devouring the *leſſer* at their pleaſure. Nor yet *Democracy* or popular State, much leſs an *Anar*, where all confuſedly are *hail fellows well met*. t a moſt excellently mixt or *qualified Monarchy*, ere the King is veſted with large *Prerogatives* ficient to ſupport *Majeſty*; and reſtrain'd only m power of doing himſelf and his people *harm*, hich would be contrary to the very end of all Go- nment, and is properly rather *weakneſs* than pow- the *Nobility* adorn'd with Priviledges to be a ren to Majeſty, and a refreſhing ſhade to their

Inferiours, and the *Commonalty* too, so Guarded in their Persons and Properties by the fence of Law, as renders them *Freemen*, not Slaves.

In *France* and other Nations the meer Will of the Prince *is Law*, his Word takes off any man's *Head*, imposes *Taxes*, or seises any mans *Estate* when, how, and as often as he lists, and if one be *Accused*, or but so much as suspected of any Crime he may either presently Execute him, or Banish, or Imprison him at pleasure; or if he will be so Gracious as to proceed by Form of their Laws, if any *two Villains* will but swear against the poor Party his Life is gone. Nay if there be *no Witnesses*, yet he may be put to the *Rack*, the Tortures whereof make many an *Innocent* Person confess himself Guilty, and then with seeming *Justice* he is Executed; or if he prove *so stout* as in Torments to deny the Fact, yet he comes off with *Disjoynted Bones* and such Weakness as renders his Life a Burthen to him ever after.

But in *England*, the Law is both the *Measure and the Bond* of every Subjects Duty and Allegiance, each man having a fixed Fundamental Right born with him, as to *Freedom of his Person* and *Property in his Estate*, which he cannot be deprived of, but either by his consent, or some Crime for which the Law has Impos'd such a Penalty or Forfeiture. For all our Kings take a solemn Oath (1) at their Coronation *to Observe and cause the Laws to be kept*, which was done by our present most Gracious Soveraign (2) Likewise all our Judges take an Oath, wherein amongst other points, they swear (3) *To do equal Law and Right to all the Kings Subjects, Rich and Poor, and not to delay any Person of Common Right for the Letters of the King*

(1) *See Book of Oaths, p.* 1. *and* 3.
(2) *Bakers Cro. fo.* 741.
(3) *Book of Oaths p.* 216.

of any other Person, or for any other Cause; but if any such Letters come to them, they shall proceed to do the Law, the same Letters notwithstanding; Therefore saith *Fortescue* (who was first *Chief Justice*, and afterwards Lord *Chancellor* to King *Henry the* 6th) in his Book *de Laudibus Legum Angliæ*, cap. 9. *Non potest Rex Angliæ, &c. The King of* England *cannot alter nor change the Laws of his Realm at his pleasure; For why, he Governeth his People by Power not only Royal but also Politick; If his Power over them were only Regal, then he might change the Laws of his Realm, and charge his Subjects with Tallage and other Burthens without their consent, and such is the Dominion that the Civil Laws purport, when they cry,* Quod principi placuit Legis habet Vigorum, *The Princes Pleasure has the force of a Law. But from this much differeth the power of a King, whose Government over his People is Politick; For he can neither change Laws without the consent of his Subjects, nor charge them with Impositions against their Wills; Wherefore his People do frankly and freely have and occupy their own Goods, being Ruled by such Laws as they themselves desire.* Thus *Fortescue*; with whom Accords *Bracton* a Reverend Judge and Law-Author in the Reign of King *Henry* the third, saying— *Rex in Regno suo superiorem habet Deum & Legem, The King in his Realm hath two Superiours, God and the Law*; for he is under the *Directive*, though not *Coercive* Power of the Law; And on the same Score Judge *Vaughan* calls the King of our *Fundamental Laws*, which are Coeval with the Government, sticks not to say, *The Laws of England were never the Dictates of any Conquerours Will, or the* placita *or good Will and pleasure of any Kings of this Nation, or to speak Impartially and Properly, the Results of any Parliament that ever sate in this Land.* And the late cited *Fortescue* in his

13 *chap.* has a very apt similitude to Illustrate and Demonstrate this, *The Law,* (says he) *taketh its name, a* Ligando, *to bind, for thereby the Politick Body is knit and preserv'd together, as the Natural Body by the Bones and Sinews, and Members, which retain every one their proper Functions; And as the Head of a Body Natural cannot change his Sinews, nor cannot deny or with-hold from his inferiour Members, their peculiar Powers and several nourishments of Blood and Spirits, no more can a King which is the Head of a Body Politick, change the Laws of that Body, nor withdraw from his People their proper Substance, against their Wills and Consents in that behalf.*

'Tis true, the Law it self affirms, *The King can do no wrong*, which proceeds not only from a presumption, that so Excellent a Person *will do no ill*. But also because he Acts nothing but *by Ministers*, which (from the lowest to the highest) are answerable for their doings, so that if a King in passion should command *A.* to kill *B.* without process of Law, *A.* may yet be prosecuted by Indictment, or upon *an Appeal*, (where no Royal Pardon is allowable) and must for the same be Executed; such Command notwithstanding.

This Original happy frame of Government truly and properly call'd an *English mans Liberty*, a Priviledge not to exempt from the Law, but to be freed in Person and Estate, from Arbitrary Violence and *Oppression*; A *greater Inheritance* (saith Sir Edward Cook) *is deriv'd to every one of us from our Ancestors than from our Parents*; For without the former what would the latter signifie? And this Birthright of English-men shines most conspicuously in two things. 1. *Parliaments.* 2. *Juries.*

By the first, The Subject has a share by his Chosen Representatives in the *Legislative* (or Law-making) Power, for no new Laws bind the Land

of *England*, but ſuch as are by common conſent agreed on in that great Council.

By the ſecond, He has a ſhare in the *Executive* part of the Law, no Cauſes being Tryed, nor any man Adjudged to loſe Life, Member or Eſtate, but upon the *Verdict* of his Peers (or Equals) his Neighbours, and of his own Condition. Theſe two Grand *Pillars* of Engliſh Liberty, are the Fundamental Vital Priviledges, whereby we have been, and are preſerv'd more free and happy than any other People in the World, and (we truſt) ſhall ever continue ſo; For whoever ſhall deſign to Impair, Pervert, or Undermine either of theſe, do ſtrike at the very Conſtitution of our Government, and ought to be Proſecuted and Puniſhed with the utmoſt Zeal and Rigour. To cut down *the Banks*, and let in the Sea, or to Poyſon all the *Springs and Rivers* in the Kingdom, could not be a greater Miſchief; For this would only affect the preſent Age, but the other will Ruin and Enſlave all our Poſterity.

But beſides theſe General *Paramount Priviledges* which the Engliſh are Eſtated in by the Original Conſtitution of their Government, there are others more particularly declared and expreſſed in diverſe *Acts of Parliament*, of which ſeveral of the moſt remarkable and uſeful are here preſented at large to the Reader, with ſome *Notes* thereupon, for his better underſtanding of the ſame.

MAGNA CHARTA, or the Great Charter made in the ninth Year of King *Henry* the Third, and confirmed by King *Edward* the First, in the eight and twentieth Year of his Reign.

EDward, *By the Grace of God, King of* England, *Lord of* Ireland, *and Duke of* Guyan: *To all Arch-Bishops, Bishops, &c. We have seen the great Charter of the Lord* Henry, *sometimes King of* England, *our Father, of the Liberties of* England, *in these Words.*

HEnry, *By the Grace of God, King of* England *Lord of* Ireland, *Duke of* Normandy & Guyan *and Earl of* Anjou; *To all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bayliffs, and other our Faithful Subjects, which shall see this present Charter, Greeting. Know you that We unto the Honour of Almighty God, and for the Salvation of the Souls of our Progenitors and Successors, Kings of* England *to the Advancement of Holy Church, and Amendment of our Realm, of our meer and free Will, have Given and Granted to all Arch-Bishops, Bishops, Abbots, Priors, Earls, Barons, and to all Freemen of this our Realm, these Liberties following, to be kept in our Kingdom of* England *for ever.*

CHAP. I.

A Confirmation of Liberties.

FIrst, We have granted to God, and by this our present Charter have confirm'd for Us & our Heirs for ever; That the Church of *England* shall be free

nd ſhall have all her whole Rights and Liberties nviolable. (2.) We have granted alſo, and given o all the Freemen of our Realm, for Us and our Heirs for ever, theſe Liberties under-written, to ave and to hold to them and their Heirs for ever.

CHAP. II.

The Relief of the Kings Tenant of full Age.

IF any of our Earls or Barons, or any other which Hold of Us in Chief by Knights Service dye, nd at the time of his Death, his Heir be of full Age, and oweth to us Relief, he ſhall have his nheritance by the old Relief, that is to ſay, the Heir or Heirs of an Earl, for a whole Earldom, y one hundred pound: the Heir or Heirs of an Baron for an whole Barony, by one hundred marks: the Heir or Heirs of a Knight, for one whole Knights Fee, one hundred ſhillings at the moſt. And he that hath leſs ſhall give leſs, according o the old Cuſtom of the Fees.

CHAP. III.

The Wardſhip of an Heir within Age, The Heir a Knight.

BUt if the Heir of any ſuch be within Age, his Lord ſhall not have the Ward of him, nor of is Land, before that he hath taken of him Homage. (2.) And after that ſuch an Heir hath been n Ward (when he is come to full Age) that is to ay, to the Age of one and twenty Years, he ſhall ave his Inheritance without Relief, and without ine: ſo that if ſuch an Heir being within Age be nade Knight, yet nevertheleſs his Land ſhall remain in the keeping of his Lord unto the Term oreſaid.

CHAP. IV.

No waſte ſhall be made by a Gardian in Wards Lands.

THe Keeper of the Land of ſuch an Heir being within Age, ſhall not take of the Lands of the Heir but reaſonable Iſſues, reaſonable Cuſtems,

and Reasonable Services, and that without destruction, and waste of his Men and his Goods. (2.) And if we commit the Custody of any such Land to the Sheriff, or to any other, which is answerable unto us for the Issues of the same Land, and he make destruction or waste of those things that he hath in Custody, we will take of him amends and recompence therefore. (3.) And the Land shall be committed to two lawful and discreet men of that Fee, which shall answer unto Us for the Issues of the same Land, or unto him whom we will Assign. (4.) And if we give or sell to any man the Custody of any such Land, and he therein do make destruction or waste, he shall lose the same Custody. And it shall be Assigned to two lawful and discreet men of that Fee, which also in like manner shall be answerable to Us, as afore said.

CHAP. V.

Guardians shall maintain the Inheritance of their Wards: And of Bishopricks.

THE Keeper, so long as he hath the Custody of the Land of such an Heir, shall keep up the Houses, Parks, Warrens, Ponds, Mills, and other things pertaining to the same Land, with the Issues of the said Land: And he shall deliver to the Heir, when he cometh to his full Age, all his Land stored with Ploughs and all other things, at the least as he receiv'd it. All these things shall be observed in the Custody of Arch-Bishopricks, Bishopricks, Abbeys, Priories, Churches and Dignities vacant which appertain to Us: Except this, that such Custody shall not be sold.

CHAP. VI.

Heirs shall be Married without Disparagement.

HEirs shall be Married without Disparagement.

CHAP.

CHAP. VII.

A Widow ſhall have her Marriage, Inheritance, and Quarentine. The Kings Widow.

A Widow after the Death of her Husband Incontinent, and without any difficulty, ſhall have her Marriage, and her Inheritance. (2.) And ſhall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband and She held the day of the Death of her Husband. (3.) And She ſhall tarry in the Chief Houſe of her Husband, by forty days after the Death of her Husband, within which days her Dower ſhall be Aſſigned her, (if it were not Aſſigned her before) or that the Houſe be a Caſtle. (4.) And if ſhe depart from the Caſtle, then a competent Houſe ſhall be forthwith provided for her, in the which She may honeſtly dwell, until her Dower be to her Aſſigned, as it is aforeſaid; And She ſhall have in the mean time her reaſonable Eſtovers of the Common. (5.) And for her Dower ſhall be Aſſigned unto her the third part of all the Lands of her Husband, which were his during Coverture, except She were endowed of leſs at the Church door. (6.) No Widow ſhall be diſtrained to Marry her ſelf: Nevertheleſs She ſhall find ſurety, that She ſhall not Marry without our Licenſe and Aſſent (if She hold of Us) nor without the Aſſent of the Lord, If She hold of another.

CHAP. VIII.

How Sureties ſhall be charged to the King.

WE or our Bailiffs, ſhall not ſeize any Land or Rent for any Debt, as long as the preſent Goods and Chattels of the Debtor do ſuffice to pay the Debt, and the Debtor himſelf be ready to ſatisfy therefore. (2.) Neither ſhall the pledges of the Debtor be diſtrained, as long as the principal Debtor is ſufficient for the payment of the Debt. (3.) And if the principal Debtor fail in the payment of the Debt, having nothing wherewith to

Pay, or will not pay where he is able, the pledges shall answer for the Debt. (4.) And if they will, they shall have the Lands and Rents of the Debtor until they be satisfied of that, which they before payed for him, except that the Debtor can shew himself to be acquitted against the said Sureties.

CHAP. IX.

The Liberties of London, and other Citys and Towns Confirmed.

THE City of *London*, shall have all the old Liberties and Customes, which it hath been used to have. Moreover, we Will and Grant, that all other Citys and Borroughs, Towns, and the Barons of the five Ports, and all other Ports, shall have all their Liberties and free Customes.

CHAP. X.

None shall distrain for more Service than is due.

NO man shall be distrained to do more Service for a Knights Fee, nor for any Freeholder, then therefore is due.

CHAP. XI.

Common-Pleas, shall not follow the Kings Court.

COmmon-Pleas, shall not follow our Court, but shall be holden in some place certain.

CHAP. XII.

Where, and before whom Assizes shall be taken. Adjournment for Difficulty.

ASsizes of *Novel Disseisn* and of *Mortdancester*, shall not be taken but in the Shires, and after this manner: If we be out of this Realm, our Chief Justicers shall send our Justicers through every County once in the Year; Which, with the Knights of the Shire, shall take the said Assizes in those Counties. (2.) And those things that at the coming of our foresaid Justicers, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in some other place in their Circuit. (3.) And those things which for difficulty

ficulty of ſome Articles cannot be determined by them, ſhall be referred to our Juſticers of the Bench, and there ſhall be ended.

CHAP. XIII.

Aſſizes of Darrein Preſentment.

ASſizes of Darrein Preſentment, ſhall be always taken before our Juſticers of the Bench, and there ſhall be determined.

CHAP. XIV.

How men of all ſorts ſhall be amerced, and by whom.

A Free-man ſhall not be amerced for a ſmall fault, but after the manner of the fault. And for a great fault after the greatneſs thereof, ſaving to him his contenement. (2.) And a Merchant likewiſe, ſaving to him his Merchandiſe. (3.) And any others Villain than ours ſhall be likewiſe amerced, ſaving his Wainage, if he fall into our mercy. (4.) And none of the ſaid amerciaments ſhall be Aſſeſſed, but by the Oath of honeſt and lawful men of the Vicinage. (5.) Earls and Barons, ſhall not be amerced, but by their Peers, and after the manner of their offence. (6.) No man of the Church ſhall be amerced after the quantity of his Spiritual Benefice, but after his Lay-tenement, and after the quantity of his offence.

CHAP. XV.

Making of Bridges and Banks.

NO Town nor Freeman ſhall be diſtrained to make Bridges nor Banks, but ſuch as of old time, and of right have been accuſtomed to make them in the time of King *Henry* our Grand-Father.

CHAP. XVI.

Defending of Banks.

NO Banks ſhall be defended from henceforth, but ſuch as were in defence in the time of King *Henry* our Grand-father, by the ſame places, and the ſame bounds as they were wont to be in his time.

Chap.

CHAP. XVII.

Holding Pleas of the Crown.

NO Sheriff, Conſtable, Eſcheator, Coroner, nor any other our Bayliffs, ſhall hold Pleas of our Crown.

CHAP. XVIII.

The Kings Debtor dying, the King ſhall be firſt paid.

IF any that holdeth of Us Lay-fee do dye, and our Sheriff or Bayliff do ſhew our Letters Pattents of our Summons for Debt, which the Dead man did owe to us: It ſhall be lawful to our Sheriff or Bayliff, to Attach and Inroll all the Goods and Chattels of the Dead, being found in the ſaid Fee, to the value of the ſame Debt, by the ſight and teſtimony of lawful men; So that nothing thereof be taken away, until we be clearly paid off the Debt. (2.) And the reſidue ſhall remain to the Executors, to perform the Teſtament of the Dead. (3.) And if nothing be owing to Us, all the Chattels ſhall goe to the uſe of the Dead (ſaving to his Wife and Children the Reaſonable parts.)

CHAP. XIX.

Purveyance for a Caſtle.

NO Conſtable, nor his Bayliff ſhall take Corn or other Chattels of any man, if the man be not of the Town where the Caſtle is, but he ſhall forthwith pay for the ſame, unleſs that the Will of the Seller was to reſpite the payment. (2.) And if he be of the ſame Town, the price ſhall be paid unto him within forty days.

CHAP. XX.

Doing of Caſtle Ward.

NO Conſtable ſhall diſtrain any Knight for to give money for keeping of his Caſtle, if he himſelf will do it in his proper perſon, or cauſe it to be done by another ſufficient man, if he may not do it himſelf for a reaſonable cauſe, (2.) And if we do lead or ſend him in an Army, he ſhall be

be free from Caſtle-ward for the time that he ſhall be with Us in Fee in our Hoſt, for the which he hath done Service in our Wars.

CHAP. XXI.

Taking of Horſes, Carts, and Woods.

NO Sheriff nor Bayliff of ours, nor any other, ſhall take the Horſes or Carts of any man to make Carriage, except he pay the old price limited, that is to ſay, for Carriage with two Horſe, 10. d. a day, for three Horſe 14. d. a day. (2.) No demeſn Cart of any ſpiritual Perſon or Knight, or any Lord, ſhall be taken by our Bayliffs. (3.) Nor we, nor our Bayliffs, nor any other ſhall take any mans Wood for our Caſtles, or other our Neceſſarys to be done, but by the Licenſe of him, whoſe the Wood is.

CHAP. XXII.

How long Felons Lands ſhall be holden by the King.

WE will not hold the Lands of them that be Convict of Felony but one Year and one day, and then thoſe Lands ſhall be delivered to the Lords of the Fee.

CHAP. XXIII.

In what place Wears ſhall be put down.

ALL Wears from henceforth ſhall be utterly put down by *Thames* and *Medway*, and through all *England*, but only by the Sea-Coaſts.

CHAP. XXIV.

In what Caſe a Præcipe in Capite, *is not grantable.*

THE Writ that is called *Præcipe in Capite*, ſhall be from henceforth granted to no Perſon of any Free-hold, whereby any Freeman may loſe his Court.

CHAP. XXV.

There ſhall be but one Meaſure throughout the Realm.

ONE Meaſure of Wine ſhall be through our Realm, and one Meaſure of Ale, and Meaſure of Corn, that is to ſay, the Quarter of *London*.

(2.) And

(2.) And one breadth of died Cloath, Ruſſets, and Haberjects, that is to ſay two yards within the Liſts. (3.) And it ſhall be of weights as it is of Meaſures.

CHAP. XXVI.

Inquiſition of Life and Member.

NOthing from henceforth ſhall be given for a Writ of Inquiſition, nor taken of him that prayeth Inquiſition of Life or of Member, but it ſhall be granted freely, and not denied.

CHAP. XXVII.

Tenure of the King, in Socage, and of another by Knights Service. Petit Serjeantry.

IF any do hold of Us by Fee-farm. or by Socage, or Burgage, & he holdeth Lands of another by Knights Service, we will not have the Cuſtody of his Heir, nor of his Land, which is holden of the Fee of another by reaſon of that Fee-farm, Socage. or Burgage. (2.) Neither will we have the Cuſtody of ſuch Fee-farm, or Socage or Burgage, except Knights Service be due unto Us out of the ſame Fee-farm. (4.) We will not have the Cuſtody of the Heir, or of any Land, by occaſion of any Petit Serjeantry that any man holdeth of Us, by Service to pay a Knife, an Arrow, or the like.

CHAP. XXVIII.

Wager of Law ſhall not be without Witneſs.

NO Bayliff from henceforth, ſhall put any man to his open Law, nor to an Oath, upon his own bare ſaying, without faithful Witneſſes brought in for the ſame.

CHAP. XXIX.

None ſhall be Condemned without Tryal. Juſtice ſhall not be ſold or deferred.

NO Freeman ſhall be taken or Impriſoned, or be diſſeiſed of his Free-hold, or Liberties, or free Cuſtomes, or be Outlawed or Exiled, or any otherwiſe deſtroyed, nor we will not paſs upon him,

nor

nor condemn him, but by lawful Judgment of his Peers, or by the *Law* of the *Land*. (2.) We will ſell to no man, we will not deny or defer to any man either Juſtice or Right.

CHAP. XXX.

Merchants, Strangers, coming into this Realm, ſhall be well uſed.

ALL Merchants (if they were not openly prohibited before) ſhall have their ſafe and ſure Conduct to depart out of *England*, to come into *England*, to tarry in and go through *England*, as well by *Land* as by Sea, to buy and ſell without any manner of Evil Tools, by the old and rightful Cuſtoms, except in time of War. (2.) And if they be of a *Land* making War againſt Us, and be found in our Realm at the beginning of the Wars, they ſhall be Attached without harm of Body and Goods, until it be known unto us, or our Chief Juſtice, how our Merchants be intreated there in the *Land* making War againſt Us. (3.) And if our Merchants be well intreated there, theirs ſhall be likewiſe with Us.

CHAP. XXXI.

Tenure of a Barony, coming into the Kings Hand by Eſchete.

IF any man hold of any Eſchete, as of the Honour of *Walinford*, *Notingham*, *Boloin*, or of any other Eſchetes which be in our hand, and are Baronies, and dye, his Heir ſhall give none other Releif, nor do none other Service to Us then he ſhould to the Baron, if it were in the Barons hand. (2.) And we in the ſame wiſe ſhould hold it as the Baron held it, neither ſhall we have by occaſion of any Baron or Eſchete, any Eſchete or Keeping of any of our men, unleſs he that held the Barrony or Eſchete, otherwiſe held of us in Chief.

CHAP.

CHAP. XXXII.

Lands shall not be aliened to the prejudice of the Lords Service.

NO Freeman, from henceforth shall give or s any more of his Land, but so that of t Residue of the Lands, the Lord of the Fee may h the Services due to him, which belongeth to the Fe

CHAP. XXXIII.

Patrons of Abbies, shall have the Custody of them in the time of Vacation.

ALl Patrons of Abbies, which have the Kin Charter of *England*, of Advowson, or ha old tenure or possession in the same, shall ha the Custody of them when they fall void, as it h been accustomed, and as it is afore declared.

CHAP. XXXIV.

In what only Case a Woman shall have an Appeal of Death.

NO man shall be taken or Imprisoned upon t Appeal of a Woman, for the Death of a other than of her Husband.

CHAP. XXXV.

At what time shall be kept a Country-Court, Sheriffs turne, and a Leet.

NO Country from henceforth shall be holde but from mouth to mouth; and where gre er time hath been used, there shall be great (2.) Nor any Sheriff or his Bayliff shall keep Turn in the Hundred, but twice in the Year: a no where but in due place and accustomed, that to say, once after *Easter*, and again after the Fea of Saint *Michael*. (3.) And the view of *Fran pledge* shall be likewise at the Feast of Saint *Mich el* without occasion. So that every man have h Liberties which he had, or used to have in the tim of King *Henry* our Grand-father, or which he ha purchased since. (4.) The view of *Frank-pledg* shall be so done, that our peace may be kept. (5.) An

th

that the Trything be wholly kept as it hath been accuſtomed. (6.) And that the Sheriff ſeek no occaſions, and that he be content with ſo much as the Sheriff was wont to have for his view-making in the time of King *Henry* our Grandfather.

CHAPP. XXXVI.

No Land ſhall be given in Mortmain.

IT ſhall not be lawful from henceforth to any one to give his Lands to any Religious Houſe, and to take the ſame Land again to hold of the ſame Houſe. Nor ſhall it be lawful to any Houſe of Religion to take the Lands of any, and to *Leaſe* the ſame to him of whom he received it; If any from henceforth give his Lands to any Religious Houſe, and thereupon be Convict, the Gift ſhall be utterly void, and the Land ſhall Accrue to the *Lord* of the Fee.

CHAP. XXXVII.

A Subſidy in reſpect of this Charter, and the Charter of the Forreſt granted to the King.

EScuage from henceforth ſhall be taken, like as it was wont to be in the time of King *Henry* our Grandfather, reſerving to all *Archbiſhops, Biſhops, Abbots, Priors, Templers, Hoſpitallers, Earls, Barons*, and all perſons as well Spiritual as Temporal, all their free *Liberties* and free Cuſtoms which they have had in time paſſed; (2.) And all theſe Cuſtoms and *Liberties* aforeſaid, which we have granted to be holden within this our Realm, as much as appertaineth to us and our Heirs, we ſhall obſerve. (3.) And all men of this our Realm, as well Spiritual as Temporal (as much as in them is) ſhall obſerve the ſame againſt all perſons in like wiſe. (4.) And for this our Gift and Grant of theſe liberties, and of other contained in our Charter of liberties of our Foreſt, the *Archbiſhops, Biſhops, Abbots, Priors, Earls Barons, Knights, Fyeeholders*, and other our Subjects, have given unto us the fifteenth part

of

of all their moveables. (5.) And we have grant[ed] unto them on the other part, that neither we n[or] our Heirs ſhall procure or do any thing, where[by] the *Liberties* in this Charter contained, ſhall be I[n]fringed or Broken. (6.) And if any thing be pr[o]cured, by any Perſon, contrary to the premiſſes, ſhall be had of no force nor effect. Theſe bei[ng] Witneſſes, Lord *B.* Arch-Biſhop of *Canterbur[y]* *E.* Biſhop of *London*, &c.

We, Ratifying and Appoving theſe Gifts a[nd] Grants aforeſaid, confirm and make ſtrong all t[he] ſame for Us and our Heirs perpetually; And by t[he] Tenour of theſe preſents, do renew the ſame, W[il]ling and Granting for Us and our Heirs, that t[he] Charter, and all and ſingular his Articles for e[ver] ſhall be ſtedfaſtly, Firmly and Inviolably obſerve[d]. And if any Article in the ſame Charter containe[d] yet hitherto peradventure hath not been kept, W[e] will, and by Authority Royal Command from hence forth firmly they be obſerved. In Witneſs where[of] we have cauſed theſe our *Letters Pattents* to be made *T. Edward* our Son at *Weſtminſter*, the twenty eigh[th] day of *March*, in the twenty eighth year of ou[r] Reign.

Note

Notes on *Magna Charta.*

THis Excellent Law holds the firſt place in our Statute Books, for though there were no doubt many Acts of Parliament long before this, yet they are not now Extant: 'tis called *Magna Charta*, or the Great Charter, not in reſpect of its Bulk, but in Regard of the great Importance and weight of the matters therein contained, it is alſo ſtyled *Charta Libertatum Regni*, the Charter of the Liberties of the Kingdom, and upon great reaſon (ſaith *Cook* in his Proem) is it ſo called from the effect, *Quia liberos facit*, becauſe it makes and preſerves the people free.

Though it run in the ſtile of the King *as a Charter*, yet (as my Lord *Cook* well obſerves on the 38 Chapter) it appears to have paſſed in Parliament, for there was then a Fifteenth granted to the King, by the Biſhops, Earls, Barons, Free-tenants and people, which could not be but in Parliament, nor was it unuſual in thoſe times to have Acts of Parliament, in a Form of a Charter: as you may read in the Princes caſe, Co. *Rep. L.* 8.

Likewiſe though it be ſaid here, that the *King hath given and granted theſe Liberties*, yet they muſt not be underſtood as meer *Emanations* of Royal *Favour*, or new Bounties granted, which the people could not juſtly challenge or had not a *Right* unto before; For the Lord *Cook* at divers places aſſerts, and all Lawyers know, that this Charter is for the moſt part only *Declaratory* of the principal grounds of the Fundamental Laws and Liberties of *England*, no new freedom is hereby granted, but a Reſtitution of ſuch as lawfully they had before, and to free them of what had deen uſurped and encroached upon them by any power whatſoever, and therefore you

may

may see this Charter often mentions *Sua Jura*, the Rights, and *Libertates suas*, their Liberties, which shews they had them before, and that the same now were Confirmed.

As to the occasion of this Charter, it must be noted, that our Ancestors the Saxons had with a most equal paize and temperament, very wisely contrived their Government, and made excellent provisions for their Liberties, and to preserve the people from oppression, and when *William* the *Norman* made himself Master of the Land, though he be commonly called the *Conquerour*, yet in truth he was not so, and I have known several Judges that would reprehend any Gentleman at the Bar that casually gave him that Title; For though he killed *Harold* the Usurper, and Routed his Army, yet he pretended right to the Kingdom, and was admitted by Compact, and did take an Oath to observe the *Laws and Customs*.

But the truth is, he did *not perform* that Oath as he ought to have done; And his Successors *William Rufus*, King *Stephen*, *Henry* the first, and *Richard* likewise, made frequent *Encroachments* upon the Liberties of their people, but especially King *John* made use of so many Illegal Devices to draw them of *Mony*, that wearied with intollerable oppressions they resolved to oblige the King to grant them their Liberties, and to promise the same should be observed, which King *John* did in *Runing-mead* between *Staines* and *Windsor*, by two Charters, one called *Charta Libertatum*, *The Charter of Liberties* (the Form of which you may read in *Math. Paris Fol.* 246. and is in effect the same with this here recited) the other the *Charter of the Forrest*, Copies of which he sent into every County, and commanded the Sheriffs, *&c.* to see them fulfilled.

But by ill Council he quickly after began to violate them as much as ever, whereupon Disturbances arose

great miseries arose both to himself and the Realm.

The Son and Successor of this King *John* was *Henry* the third, who in the 19th. year of his Reign, Renewed and Confirmed the said Charters, but within two years after *Cancelled* them by the pernitious advice of his Favourites, and particularly *Hubert de Burg* whom he had made Lord Chief Justice; one that in former times had been a great Lover of his Country, and a well deserving Patirot, as well as Learned in the Laws, but now to make *this* a step to his *Ambition* (which ever Rideth without Reins) perswaded and humored the King that he might avoid the Charters of his Father King *John* by *Dureſſe*, and his own Great Charter, and *Charta de Foreſta* also, for that he was *within Age* when he granted the same, whereupon the King in the eleventh year of his Reign, being then of full Age, got one of the great Charters, and of the Forrest, into his Hands, and by the Council principally of this *Hubert* his Chief Justice, at a Council holden at *Oxford*, unjustly *Cancelled both the said Charters*, (notwithstanding the said *Hubert de Burg* was the primier Witness of all the Temporal Lords to both the said Charters) whereupon he became in high Favour with the King, insomuch that he was soon after (*viz.* the 10th of *December* in the 13th year of that King) Created (to the highest Dignity that in those times a Subject had) to be an Earl, *viz.* of *Kent*. But soon after (for Flaterers and Humorists have no sure Foundation) he fell into the Kings heavy Indignation, and after many fearful and *miserable* Troubles, he was justly, and according to Law Sentenced by his Peers in an open Parliament, and justly *Degraded* of that Dignity which he unjustly had obtained by his Council for Cancelling of *Magna Charta*, and *Charta de Foreſta*.

In the 9th. *Chap.* of this great Charter, all the Antient Liberties and Customs of *London*, are Confirmed

firmed and preserved, which is likewise done by divers other Statutes, as 14. *Edw.* 3. *Cap.* 2. &c.

The 29 Chapt. NO FREEMAN SHALL BE TAKEN, &c. Deserves to be written in Letters of Gold, and I have often wondered the words thereof are not Inscribed in Capitals on all our Courts of Judicature, *Town-Halls* and most publick Edifices, they are the Elixir of our *English* Freedoms, the Storehouse of all our Liberties. And because my Lord *Cook* in the second part of his Institutes, has many excellent Observations, I shall here Recite his very words. This Chapter containeth nine several Branches:

1. *That no man be taken or Imprisoned*, but *per Legem terræ*, that is, by the Common Law, Statute Law, or Custom of *England*: For these words, *per Legem terræ*, being towards the end of this Chapter, do Refer to all the precedent matters in this Chapter; and this hath the first place, because the *Liberty of a mans person* is more pretious to him than all the rest that follow, and therefore it is great reason that he should by Law be Relieved therein, if he be wronged, as hereafter shall be shewed.

2. *No man shall be Disseised*, that is, put out of Seisin or dispossessed of his Free-hold, that is, Lands or Livelihood, or of his Liberties or free Customs, that is of such Franchises and Freedoms, and free Customs as belong to him, by his Free Birth Right, unless it be by the *lawful Judgment* that is, *verdict*, of his equals (that is, of men of his own Condition) or by the *Law of the Land*, that is (to speak it once for all) by the due Course and process of Law.

3. *No man shall be Outlawed*, made an *Exlex*, put out of the Law, that is, deprived of the Benefit of the Law, unless he be Outlawed according to the Law of the Land.

4. *No man shall be Exiled* or Banished out of his Country, that is, *Nemo perdet patriam*, no man

shall

hall *lose his Country*, unleſs he be Exiled according o the Law of the *Land*.

5. *No man ſhall in any ſort be deſtroyed* (*Deſtrue id eſt quod prius ſtructum & factum fuit, penitus vertere & Diruere*) unleſs it be by the verdict of is Equals, or according to the Law of the Land.

6. No man ſhall be Condemned at the Kings uit, either before the King in his Bench, where the leas are *Coram Rege* (and ſo are the words, *Nec ſuer eum ibimus* to be underſtood;) nor before any oher Commiſſioner or Judge whatſoever, and ſo are he words, *Nec ſuper eum mittemus*, to be underood, but by the Judgment of his Peers, that is, equals, or according to the Law of the Land.

7. We ſhall ſell to no man Juſtice or Right.

8. We ſhall deny to no man Juſtice or Right.

9. We ſhall defer to no man Juſtice or Right.

Each of theſe we ſhall briefly explain.

1. No man *ſhall be taken*, (that is) Reſtrained Liberty by Petition or Suggeſtion to the *King* his *Council*, unleſs it be by Indictment or Preentment of good and lawful men, where ſuch deeds e done. This Branch and divers other parts this Act have been notably explained and Conrued by divers Acts of Parliament, ſeveral of which ou will find Recited hereafter in this Book.

2. *No man ſhall be diſſeiſed*, &c. Hereby is inended that Lands, Tenements, Goods and Chattels hall not be ſeiſed into the Kings Hands contrary to is great Charter, and the Law of the Land, nor any an ſhall be diſſeiſed of his Lands or Tenements, or iſpoſeſſed of his Goods or Chattels, contrary to the aw of the Land.

A Cuſtom was alleadged in the Town of C. that the Tenant ceaſe by two years, that the Lord ould enter into the Freehold of the Tenant, and old the ſame until he were ſatisfied of the Arrear es it was adjudged a Cuſtom againſt the Law of

the

the Land, to enter into a mans Freehold in that c without Action or answer.

King *Henry* 6. Granted to the Corporation *Diers* within *London*, power to search, &c. And they found any Cloth died with *Log-Wood*, that Cloath should be forfeit: And it was adjudged, t this Charter concerning the forfeiture was aga the Law of the Land, and this Statute; For no f feiture can grow by Letters Patents.

No man ought to be put from his Livelihood wi out Answer.

3. *No man Outlawed*] That is, barred to have t benefit of the Law. And note to this word *Outla* these words, *Unless by the Law of the Land*, do R fer. [*Of his Liberties*] This word hath three S g ifi tions:

1. As it hath been said, it signifieth the *Laws* the Realm, in which respect this Charter is call *Charta Libertatum*, as aforesaid.

2. It signifieth the *Freedom the Subjects* of E *gland* have: for example, the Company of *Mercha Taylors* of *England*, having power by their Char to make Ordinances, made an Ordinance that eve Brother of the same Society should put the c half of his Cloaths to be dressed by some Clo Workers free of the same Company, upon pain Forfeit 10 *s.* &c. And it was adjudged that this O dinance was against Law, because it was against Liberty of the Subject, for every Subject hath fr dom to put his Cloaths to be dressed by whom will, & *sic de similibus*. And so it is, if such the like grant had been made by his Letters P tents.

3. *Liberties* signifie the *Franchises and Privile ges* which the Subjects have of the gift of the Ki as the Goods and Chattels of *Felons*, *Out-Laws* the like; or which the Subject claims by Prescr tion, as *wreck*, *waife*, *strais*, and the like.

So likewiſe and for the ſame reaſon, if a Grant be made to any man to have the Sole making of *Cards*, or the Sole dealing with any other Trade, that Grant is againſt the *Liberty* and Freedom of the Subject, that before did or lawfully might have uſed that Trade, and conſequently againſt this great Charter.

Generally *all Monopolies* are againſt this great Charter, becauſe they are againſt the Liberty and Freedom of the Subject, and againſt the Law of the Land.

4. *No man Exiled*, that is Baniſht or forced to depart or ſtay out of *England* without his Conſent. By the Law of the Land, no man can be *exiled* or Baniſhed out of his Native Country, but either by *Authority of Parliament*, or in Caſe of Abjuration or Felony by the Comon Law; and ſo when our Books, or any Record, ſpeak of *Exile*, or Baniſhment, other than in caſe of Abjuration, it is to be intended to be done by *Authority of Parliament*, as *Belknap* and other Judges, *&c.* Baniſhed into *Ireland*, in the Reign of *Rich.* the Second.

This is a Beneficial Law, and is Conſtrued benignly; And therefore the King cannot ſend any Subject of *England* againſt his will to ſerve him out of his Realm, for that ſhould be an Exile, and he ſhould *perdere Patriam:* No, he cannot be ſent againſt his will into *Ireland*, to ſerve the King or his Deputy there, becauſe it is out of the Realm of *England:* For if the King might ſend him out of this Realm to any place, then under pretence of Service, as Ambaſſador or the like, he might ſend him into the furtheſt part of the World, which being an Exile, is prohibited by this Act.

5. *No man deſtroyed*— That is forejudged of Life or Limb, or put to Torture or Death, every oppreſſion againſt Law by colour of any uſurped Authority is a kind of deſtruction. And the words *Aliquo-*

quo modo (any otherwise) are added to this Verb *destroyed*, and to no other Verb in this Chapter, therefore all things by any manner of means tending to destruction are prohibited; as if a man be accused or Indicted of Treason or Felony, his Land or Goods cannot be granted to any, no not so much as by promise, nor any of his Lands or Goods seized into the Kings hands before he is Attainted. For when a Subject obtaineth a promise of the forfeiture, many times undue means and more violent prosecution is used for private Lucre, tending to destruction, than the quiet and just proceeding of Law would permit, and the party ought to live his own until Attainder.

6. *By Lawful Judgment of his Peers,*] That is his *Equals*, men of his own Rank and Condition. The general division of Persons by the Law of *England*, is, either *one that is Noble*, and in respect his Nobility of the Lords House of Parliament, or *one of the Commons*, and in respect thereof, of the House of Commons in Parliament. And as there be diverse degrees of Nobility, as Dukes, Marquesses, Earls, Viscounts, and Barons, and yet all of them are comprehended under this word *Peers*, and are Peers of the Realm; so of the Commons, there are Knights, Esquires, Gentlemen, Citizens, and Yeomen, and yet all of them of the Commons of the Realm. And as every of the Nobles is one a Peer to another, though he be of a several degree, so is of the Comons; and as it hath been said of men, so doth it hold of Noble Women, either by Birth or Marriage.

And forasmuch, as this Judgment by Peers is called *Lawful*, it shews the Antiquity of this manner of Trial, It was, the ancient accustomed Law, Course long before this Charter.

Or by the Law of the Land.] That is by due process of Law, for so the words are expresly expo-

led by the Stat. of 37. *Edw.* 3. *chap.* 8. And these words are specially to be referred to those foregoing, to whom they relate. As none shall be condemn'd without a lawful Trial by his Peers, so none shall be taken, Imprisoned, or put out of his Free-hold, without due process of the Law, that is by the Indictment or Presentment, of good and lawful men of the place in due manner, or by Writ Original of the Common-Law.

Now seeing, that no man can be Taken, Arrested, Attached, or Imprisoned, but by due process of Law, and according to the Law of the Land, these conclusions hereupon do follow.

1. That the Person or Persons which Commit any, must have lawful Authority.

2. It is necessary that the Warrant or Mittimus be lawful, and that must be in Writing under his Hand and Seal.

3. The Cause must be contained in the Warrant, for Treason, Felony, *&c.* Suspition of Treason, Felony, or the like particular Crime; For if it do not thus specify the Cause, if the Prisoner bring his *Habeas Corpus*, he must be discharged, because no Crime appears on the Return; Nor is it in such case any offence at all, if the Prisoner make his Escape; whereas if the Mittimus contain the Cause, the escape would respectively be Treason or Felony, though in Truth he were not Guilty of the first Offence. And this mentioning the Cause, is agreeable to Scripture, *Acts* 5.

4. The Warrant or Mittimus containing a lawful Cause, ought to have a lawful conclusion, *&c.* And then safely to keep until he be delivered by Law, *&c.* and not until the party committing shall further Order.

If any man by colour of any Authority, where he hath not any in that particular Case, shall presume to Arrest or Imprison any man, or cause him

to be Arrested or Imprisoned, this is against
Act, and it is most hateful, when it is done
Countenance of Justice, King *Edw.* the 6th. did
corporate the Town of Saint *Albans*, and gran
to them to make Ordinances, *&c.* They made a
Law upon pain of Imprisonment, and it was
judged to be against this Statute of *Magna Char*
so it had been, if such an Ordinance had been c
tained in the Pattent it self.

We will sell to no man, deny to no man, &c. T
is spoken in the person of the King, who in Ju
ment of Law in all his Courts of Justice is pres
And therefore every Subject of this Realm, for
jury done to him, *in Bonis, Terris, vel Persona*, in P
son, Lands, or Goods, by any other Subject, *Ec*
siastical or Temporal, whatever he be without
ception, may take his Remedy by the course of
Law, and have Justice and Right for the In
done him, *Freely* without sale, *Fully* without any
nial, and *Speedily* without delay; For Justice m
have three Qualities, it must be *Libera*, Free,
nothing is more odious than Justice set to sale. *Pl*
Full, for Justice ought not to Limp, or be gra
Peice-meal, and *Celeris*, speedy: *Quia Dilati*
quædam negatio, delay is a kind of denial;
when all these meet, it is both Justice and Righ

We will not deny nor delay any man, &c.) T
words have been excellently expounded by L
Acts of Parliament, that by no means com
right or common law should be disturbed or de
ed; no, though it be commanded under the G
Seal, or Privy Seal, Order, Writ, Letters, Mes
or Commandment whatsoever, either from the
or any other; and that the Justices shall proce
if no such Writs, Letters, Order, Message, o
Commandment were come to them: all ou Ju
swear to this; for 'tis part of their Oath, so t
any shall be found wresting the Law to serve a
T

turn, they are perjur'd as well as unjuſt. The Common-laws of the Realm ſhould by no means be *delayed*, for the *Law* is the ſureſt Saactuary that a man can take, and the ſtrongeſt Fortreſs to protect the weakeſt of all; *Lex eſt tutiſſima Caſſis*, the Law is a moſt ſafe Head-peice, and *ſub Clipeo legis nemo decipitur*, no man is deceived whilſt the Law is his Buckler: but the King may ſtay his own ſuit, as a *Capias profine*, for the King may Reſpit his fine, and the like.

All protections that are not *Legal*, which appear not in the Regiſter, nor warranted by our Books, are expreſly againſt this Branch, *nulli differemus*, we will not delay any man: As a Protection under the Great Seal granted to any man, directed to the Sheriffs, *&c.* and commanding them that they ſhall not Arreſt him during a certain time at any other mans ſuit, which hath words in it, *Per prerogativum noſtram quam nolumus eſſe Arguendam; By our Prerogative, which we will not have diſputed*; Yet ſuch Protections have been argued by the Judges, according to their Oath and Duty, and adjudged to be void. As *Mich.* 11. *H.* 7. *Rot.* 124. a Protection granted to *Holmes* a Vintner of *London*, his Factors, Servants and Deputies, *&c.* Reſolved to be againſt Law. *Paſch.* 7. *H.* 8. *Rot.* 66. ſuch a Protection diſallowed, and the Sheriff amerced for not executing the Writ, *Mich.* 13. and 14 *Eliz.* in *Hitchcocks* Caſe, and many other of latter time: And there is a notable Record of Antient time in 22 *E.* 1. *John le Merſhals* Caſe, *Non pertinet ad vicecomitem de Protectione Regis Judicare, imo ad Curiam.*

Juſtice or Right] We ſhall not ſell, deny or delay Juſtice and Right, neither the *End*, which is *Juſtice*; nor the *Mean* whereby we may attain to the End, and that is the *Law*: Right, is taken here for *Law*, in the ſame ſenſe that Juſtice often is ſo called. Becauſe it is the *Right Line*, whereby Juſtice

diſtributive is Guided and Directed; and therefor all the Commiſſioners of *Oier* and *Terminer*, Goal-delivery, of the Peace, *&c.* have this Claus *Facturi quod ad Juſtitiam pertinet, ſecundum Lege & Conſuitudinem Angliæ*, that is, to do *Juſtice a Right*, according to the Rule of the *Law and C ſtome* of *England*; and that which is called *Co mon Right* in 2 *E.* 3. is called *Common-Law* 14 *E* 3, *&c.* and in this ſenſe it is taken, where it ſaid, *ita quod ſtat. Rectus in Curia, id eſt Legi Curia.*

2. The Law is called *Rectum*, becauſe it diſco vereth that which is Tort, *Crooked* or *Wrong*; for Right ſignifieth Law, ſo Tort, Crooked or Wron ſignifieth Injury, and *Injuria eſt contra Jus*, Injur is againſt Right. *Recta Linea eſt index ſui & o liqui*, a right line is both *declaratory of it ſelf a the oblique.* Hereby the Crooked Cord of th which is called *Diſcretion* appeareth to be unlawfu unleſs you take it as it ought to be, *diſcretio eſt d cernere per Legem, quid ſit Juſtum*, diſcretion is t diſcern by the Law what is Juſt.

3. It is called *Right*, becauſe it is the beſt *Birth right* the Subject hath, for thereby his Good Lands, Wife and Children, his Body, Life, Honou and Eſtimation are protected from Injury, an and wrong: *major Hæreditas venit unicuiq; n ſtrum a Jure & Legibus quam a Parentibus*; greater Inheritance deſcends to us from the Law than from our Progenitors.

Thus far the very words of that Oracle of ou Law; The Sage and Learned *Coke*, which ſo full and excellently explain this incomparable Law, th it will be ſuperfluous to add any thing further there anto.

A Com

Confirmation of the Charters of the Liberties of England, *and of the Forreſt, made in the* 35th *year of* Edw. *the Firſt.*

EDward by the Grace of God King of *England*, Lord of *Ireland*, and Duke of *Guyan*, to all thoſe theſe preſent Letters ſhall hear or ſee, Greeing. Know ye that we to the Honour of God, and Holy Church, and to the profit of our Realm, have granted for us and our Heirs, that the Charter of Liberties, and the Charter of the Forreſt, which were made by Common Aſſent of all the Realm, in the time of King *Henry* our Father, ſhall be kept in every point without Breach. And we will that the ſame Charter ſhall be ſent under our Seal, as well to our Juſticers of the Forreſt, as to others, and to all Sheriffs of Shires, and to all our other Officers, and to all our Cities throughout the Realm, together with our Writs, in the which it ſhall be contained that they cauſe the foreſaid Charters to be publiſhed, and to declare to the people that we have Confirmed them in all points. And that our Juſticers, Sheriffs, Mayors, and other Miniſters which under us have the Laws of our Land to guide, ſhall allow the ſame Charters pleaded before them in Judgment in all their points, that is to wit, the Great Charter as the Common Law, and the Charter of the Forreſt, for the Wealth of our Realm.

Chap. 2. And we will, that if any Judgment be given from henceforth contrary to the points of the Charters aforeſaid by the Juſticers, or by any other our Miniſters that hold plea before them againſt the points of the Charters, it ſhall be undone and holden for nought.

Cap. 3. And we will that the same Charters sh
be sent under our Seal, to Cathedral Churc
thoughout our Realm, there to Remain, and sh
be read before the People two times by the year.

Cap. 4. And that all Archbishops and Bishops sh
pronounce the Sentence of Excommunication agai
all those that by word, Deed, or Council, do co
trary to the foresaid Charters, or that in any po
break or undo them. And that the said curses,
twice a year Denounced and published by the Pr
lates aforesaid. And if the same Prelates or any
them, be Remiss in the Denunciation of the said Se
tences, the Archbishop of *Canterbury* and *York* s
the time being, shall compell and distrain them to t
Execution of their Duties in Form aforesaid.

Cap. 5. And for so much as divers people of o
Realm are in fear, that the Aids and Tasks whi
they have given to us before time towards our Wa
and other Business of their own Grant, or good W
(however they were made) might turn to a bondage
the n and their Heirs, because they might be at an oth
time found in the Rolles, and likewise for the pri
taken throughout the Realm by our Ministers: W
have granted for us and our Heirs, that we shall n
draw no such Aids, Tasks nor Prises into a Custo
for any that hath been done heretofore, be it by Ro
or any other Precedent that may be founden.

Cap. 6. Moreover, we have granted for us and o
Heirs, as well to Archbishops, Bishops, Abbots, P
ors, and other folk of Holy Church, as also to Ea
Barons, and to all the Commonalty of the La
that for no business from henceforth; we shall ta
such manner of Aids, Tasks or Prises, but by t
common assent of the Realm, and for the comm
profit thereof; saving the Antient Aids and Pri
due and accustomed.

Cap. 7. And for so much, as the more part of t
Commonalty of the Realm find themselves sore gri

d with the Maletot of Woolls, that is to wit, a Tole of forty ſhillings for every ſack of Wooll, and ave made Petition to us for to Releaſe the ſame: We at their Requeſt have clearly Releaſed it, and ave granted for us and our Heirs, that we ſhall not ake ſuch things without their common conſent and nd good will, ſaving to us and our Heirs the Cuom of *Woolls*, *Skins* and Leather, granted before y the Commonalty aforeſaid. In VVitneſs of which hings we have cauſed our Letters to be Patent. Witeſs *Edward* our Son, at *London* the 10th. of *October*, nd the twenty five year of our Reign.

Sententia lata ſuper Chartas.

The Sentence of the Clergy againſt the Breakers of the Articles above written.

IN the Name of the Father, the Son, and the Holy Ghoſt, Amen. *Whereas our Sovereign Lord the King, to the Honour of God, and of Holy Church, and for the common profit of the Realm, hath granted for him and his Heirs for ever; theſe Articles above written*; Robert *Archbiſhop of* Canterbury, *Primate of all* England *admoniſhed all his Province once, twice, and thrice*; *Becauſe that ſhortneſs will not ſuffer ſo much Delay, as to give knowledge to all the people of* England *of theſe preſents in Writing: We therefore enjoyn all perſons, of what Eſtate ſoever they be, that they and every of them, as much as in them is, ſhall uphold and maintain theſe Articles granted by our Sov. L. the K. in all points. And all thoſe that in any point do Reſiſt or break, or in any manner hereafter procure, Counſel, or any ways aſſent to reſiſt or break thoſe Ordinances, or go about it, by word or deed, openly or privily, by any manner of pretence or Colour: We the foreſaid Archbiſhop by our Authority in this Writing expreſſed, do Excommunicate and accurſe, and from the Body*

of

of our Lord Jesu Christ, and from all the Comp ny of Heaven, and from all the Sacraments of H Church do Sequester and exclude.

NOTES.

It may be observed that this Curse is left out our late Printed Statute Book, though inserted large in that Printed in three Volumns, in Queen E *zabeth* days, *Anno.* 1557. There is likewise anoth like dreadful, but more full and expres Curse, S lemnly pronounced before in the time of King He *ry* 3d. Which being also omitted in our Modern St tute-Book *I* shall add here for the Readers satisfactio

The Sentence or Curse given by the B shops against the Breakers of th Great Charter.

IN the year of our Lord, one thousand two hundr and fifty three, the third day of May, *in the gre Hall of the King at* Westminster, *in the Presen and by the assent of the Lord* Henry, *by the Gra of God, King of* England, *and the Lord* Richa *Earl of* Cornwal *his Brother,* Roger Bigot *Earl* Norfolk *and* Suffolk, *Marshal of* England, Hum phry *Earl of* Harford, Henry *Earl of* Oxford, Jo Earl Warren, *and other Estates of the Realm of E* gland: William Boniface *by the Mercy of God Arc bishop of* Canterbury, *Primate of all* England; *of* London, *H. of* Ely, *S. of* Worcester *E. of* Linco W. of Norwich, G. *of* Herford W. *of* Salisbury. *of* Durham, R. *of* Exeter, M. *of* Carlile, W. *of* Ba R. *of* Rochester, T. *of Saint* Davids: *Bishops parelled in Pontificials with Tapers burning, agai the Breakers of the Churches Liberties, and of Liberties or other Customs of the Realm of* Englan *and namely of those which are contained in the Ch*

ter of the Common Liberties of England, *and Char-*
ter of the Forreſt, have denounced the Sentence of
Excommunication in this Form. By the Authority
of Almighty God, the Father, the Son, and the Holy
Ghoſt, and of the Glorious mother of God, and per-
petual Virgin Mary, *of the Bleſſed Apoſtles* Pe-
ter and Paul, *and of all Apoſtles, and of all Mar-*
tyrs, of Bleſſed Edward *King of* England, *and of*
all the Saints of Heaven: We Excommunicate, Ac-
curſe, and from the Benefits of our Holy Mother
the Church we Sequeſter All thoſe that hereafter
willingly and maliciouſly deprive or ſpoil the Church
of her Right. And all thoſe that by any Craft or
Wilineſs do Violate, Break, Diminiſh, or change the
Churches Liberties, and free Cuſtomes contained in
the Charters of the Common Liberties, and of the
Forreſt, granted by our Lord the King, to Archbi-
ſhops, Biſhops and other Prelates of England, *and*
likewiſe to the Earls, Barons, Knights, and other
Freeholders of the Realm. And all that ſecretly or
openly, by Deed, Word or Council, do make Statutes,
or obſerve them being made, and that bring in Cu-
ſtoms, or keep them when they be brought in, againſt
the ſaid Liberties, or any of them, the Writers, the
Law-makers, Councellors, and the Executioners of
them, and all thoſe that ſhall preſume to judg againſt
them. All and every which perſons before mentioned,
that wittingly ſhall Commit any of the Premiſes, let
them well know, that they incur the foreſaid Sentence
ipſo facto, [i. e. *upon the Deed done.*] *And thoſe that*
Commit ought ignorantly, and be admoniſhed, ex-
cept they reform themſelves within 15 *days after*
the time of the admonition, and make full ſatisfa-
ction for that they have done, at the will of the or-
dinary ſhall be from that time forth wrapped in the
ſaid Sentence, and with the ſame Sentence we bur-
den all thoſe that preſume to diſturb the peace of
our Soveraigne Lord the King and of the Realm.

To

To the perpetual Memory of which thing, we the aforesaid Prelates have put our Seals to these presents.

So Zealous were our Ancestors to preserve their Liberties from encroachments, that they imployed all the strength of humane Policy and Religious Obligations to secure them intire and inviolate. And since this Act is still in as much force as the Act against Conventicles, I cannot fadome the Reason why our Prelates should not as well hold themselves obliged twice a year to accurse the Infringers thereof, as to Prosecute *Protestant Dissenters*? However we may note, that by this Statute, *Chap.* 2. It is expresly provided that if any Judgments be given from that time forwards against any of the points of *Magna Charta*, they shall be annull'd and holden for nought: therefore *Quære* whether the conviction of *Protestant Dissenters* by a Justice, and spoiling them of their goods without any Trial and Conviction by a Jury, (which is expresly against the 29 *Chapter*) of *Magna Charta* ought not to be taken notice of, and redress'd, and the original Promoters thereof to be *Curs'd* by my Lords the *Bishops* as aforesaid?

A Statute made Anno. 34. Edw. I. *commonly called* de Tallageo non Concedendo.

CHAP. I.

The King or His Heirs shall have no Tallage or Aid without consent of Parliament.

NO Tallage or Aid shall be taken or Levied by Us or our Heirs in our Realm, without the good Will and Assent of Arch-Bishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Land.

CHAP. II.

CHAP. II.

Nothing ſhall be purveyed to the Kings Uſe without the Owners conſent.

NO Officer of ours, or of our Heirs, ſhall take Corn, Leather, Cattle, or any other Goods any manner of Perſon, without the good Will d Aſſent of the Party to whom the Goods be-nged.

CHAP. III.

Nothing ſhall be taken of Sacks of Wooll by Colour of Maletot.

NOthing from henceforth ſhall be taken of ſacks of Wooll by colour or occaſion of Maletot.

CHAP. IV.

All Laws, Liberties, and Cuſtoms, confirmed.

WE Will and Grant for Us and our Heirs, That all Clerks and Lay-men of out and, ſhall have their Laws, Liberties, and free uſtomes as largely and wholly, as they have ed to have the ſame at any time when they had em beſt. (2.) And if any Statutes have been ade by Us and our Anceſtors, or any Cuſtomes ought in contrary to them, or any manner of Ar-le contained in this preſent Charter: We Will d grant that ſuch manner of Statutes and Cuſtoms all be void and fruſtrate for evermore.

CHAP. V.

Pardon granted to certain Offenders.

MOreover we have pardoned *Humphrey Bohun*, Earl of *Hereford*, and *Eſſex*, Conſtable of *ngland*, *Roger* Earl of *Norfolk* and *Suffolk*, Mar-al of *England*, and other Earls, Barons, Knights, quires, andnamely, *John de Ferrariis*, with all other ng of their Fellowſhip, Confederacy, and Bond, d alſo of other that hold 20*l.* Land in our Realm, nether they hold of us in Chief or of others, that re appointed at a day certain to paſs over with us o *Flanders*, the Rancour and Evil will born a-

gainſt

gainſt us, and all other Offences if any they have C
mitted againſt us, unto the making of this pre
Charter.

CHAP. VI.

*The Curſe of the Church ſhall be Pronounced ag
the Breakers of this Charter.*

AND for the more aſſurance of this thing,
will and grant that all Archbiſhops and
ſhops for ever, ſhall read this preſent Charter in
thedral Churches twice in the year, and upon
Reading thereof in every of their Pariſh-Chur
ſhall openly Denounce accurſed all thoſe that
ſingly do procure to be done any thing contra
the tenour, force and effect of this preſent *Charte*
any point and article. In witneſs of which thing
have ſet our ſeal to this preſent *Charter*, together
the ſeals of the Archbiſhops, Biſhops, which vo
tarily have ſworn that, as much as in them is,
ſhall obſerve the tenour of this preſent Charter
all Cauſes and Articles, and ſhall extend their fa
ful Aid to the keeping thereof, *&c.*

The Comment.

THE word Tallage is derived from the *French* w
Tailler, to ſhare or cut out a part, aod is
taphorically uſed for any Charge, when the King
any other does cut out or take away any part
ſhare out a mans Eſtate, and being a general wo
it includes all Subſidies Taxes, Tenths, Aids, Im
ſitions or other Charges whatſoever.

The word *Maletot* ſignifies an Evil (that
an unjuſt) Toll Cuſtom Impoſition or Sum of M

The occaſion of making this Statute was th
King *Edward* being injured by the *Frenoh* King
ſolves to make War againſt him, and in order ther
to requires of *Humphrey Le Bohun* Earl of *He*
and *Eſſex* and Conſtable of *England*, and of *R*

got Earl of *Norfolk and Suffolk*, and *Marſhal England*, and of all the *Earles*, *Barons*, *Knights*, *Eſquires* and *Freeholders* of 20. l. land, ether they held of him in Capite, to contribute wards ſuch his expedition, that is to goe in perſon find ſufficient men in their places in his army; ich the Conſtable and Marſhal and many of the *nights* and *Eſquires*, and eſpecially this *John Ferrers* ing part with them and all the Freemen, ſtoutly nyed, unleſs it were ſo ordained and determined by mmon conſent in Parliament according to Law. nd it ſeems the conteſt grew ſo hot, that *Bakers* ronicle, *folio* 99. relates a ſtrange dialogue that ſſ'd between them *viz.* That when the *Earl Mar-l* told the King *that if his Majeſty pleaſed to go in rſon, he would then go with him, and march before n in the van guard, as by right of Inheritance he ght to do; but otherwiſe he would not ſtir; the ing told* him plainly, *he ſhould go with any other, ough he went not in perſon. I am not ſo bound* ayeth the Earl) *neither will I take that Journey ithout* you: the King ſwore, *By God, Sir Earl, you all either go or Hang*, and *I ſwear by the ſame Oath* aid the Earl) *I will neither goe nor Hang.* And the King was forc'd to diſpatch his expedition ithout them. And yet, (ſaith my Lord *Coke*) altho' he King had conceived a deep diſpleaſure againſt he Conſtable, Marſhal, and others of the Nobility, Gentry, and Commons of the Realm, for denying hat which he ſo much deſired, yet, *for that they ood in defence of their Laws, Liberties, and free uſtomes*, the ſaid King *Edward* the Firſt, who (as *r William Herle* Chief Juſtice of the Common-Pleas, who lived in his time and ſerved him, aid in the time of King *Edward* the 3d.) was *the wiſeſt King that ever was*; did after his return from beyond the Seas not only conſent to this *Statute*, whereby all ſuch Tallages and Impoſitions are for-

bidden

bidden for ther future, but also passes a pardon the said Nobles, &c. of all rancour Ill-will Transgressions, *If any they have committed*; w last words were added, lest by acceptance of a P don of Transgression, they should implicitely c fess that they had Transgressed; so careful were Lords and Commons in former times to prese the Antient Laws, Liberties, and free Custom their Country.

But note these words *Si quas fecerint*, *If any have committed*, are left out in all the Prin Books of Statutes; but they are in this Statute n ted by *Coke*, in his second Book of Institutes fo. and specially noted, which he would never have do if it had not been so in the *Rolls*. And since 'tis probe there may be many more like *Omissions*, *Mist* or *Falsifications*, crept into the Prints, and for the *Record* and not the printed *Statute-Book* (vary from the *Record*) is *the Law*, It were to be wish that all the *Rolls of Acts of Parliament* were caref by some persons of Learning and Integrity, vie and *Compared* with the Prints, and notice taken all such *Variations*, and of *Errors* comitted in Translations, and of any Statutes of a publick Impo if in force, that were *never printed*, and the same be made publick.

Anno 25 *Edw.* 3.

CAP. 2.

A Declaration what offences shall be adjudged Treason.

WHereas diverse opinions have been befo this time in what Case Treason shall said, and in what not. (2.) The King at the R quest of the Lords and of the Commons, hath m a declaration in the manner as hereafter followe that is to say, When a man doth Compass or Im

e the Death of our Lord the King, or of our
dy his Queen, or of their eldeſt Son and Heir.
.) Or if a man do violate the Kings Companion,
the Kings Eldeſt daughter unmarried, or the
ife of the Kings Eldeſt Son and Heir. (4.) Or
man do Levy War againſt our Lord the King
is Realm, or be Adherent to the Kings Enemies
His Realm, giving them Aid and Comfort in the
alm, or elſewhere, and thereof be probably Attain-
of open Deed by the people of their Condition.
.) And if a man Counterfeit the Kings Great or
ivy-Seal, or his Money. (6.) And if a man
ing falſe Money into this Realm, Counterfeit to the
oney of *England*, as the Money called *Luſhburgh*,
other like to the ſaid Money of *England*, know-
the Money to be falſe, to Merchandiſe, or make pay-
ent, in deceit of our ſaid Lord the King, and of
people. (7.) And if a man Slay the Chancel-
, Treaſurer, or the Kings Juſtice of the one Bench
the other, Juſtices in *Eyre*, or Juſtices of Aſſize,
d all other Juſtices Aſſigned to Hear and Deter-
ine, being in their Places doing their Offices.
.) And it is to be underſtood, that in the Caſes
ove rehearſed that ought to be judged Treaſon,
hich extends to our Lord the King, and of his Royal
Majeſty. (9.) And of ſuch Treaſon the forfeiture
the Eſcheats partaineth to our Lord, as well of
e Lands and Tenement holden of other, as of him-
lf. (10.) And moreover, there is another man-
er of Treaſon, that is to ſay, when a Servant ſlay-
th his Maſter, or a Wife her Husband, or when a
an, Secular or Religious, ſlayeth his Prelate, to
hom he oweth Faith and Obedience. (11.) And
ſuch Treaſon the Eſcheats ought to pertain to every
ord of his own Fee. (12.) And becauſe that ma-
other like Caſes of Treaſon may happen in time
come, which a man cannot think nor declare at
is preſent time: it is Accorded, That if any other
Caſe,

Caſe, ſuppoſed Treaſon, which is not above ſpe
fied, doth happen before any Juſtices, the Juſti
ſhall tarry without any going to Judgment of t
Treaſon, till the Cauſe be ſhewed and declared b
fore the King and his Parliament, whether it ou
to be judged Treaſon or other Felony. (13.) A
if percaſe any man of this Realm, Ride Arm
covertly or ſecret with men of Arms againſt a
other, to Slay him, or Rob him, or Take him,
Retain him till he hath made Fine or Ranſome f
to have his deliverance, it is not the mind
the King nor his Council, that in ſuch Caſe
ſhall be judged Treaſon, but ſhall be judged Fel
or Treſpaſs, according to the Laws of the Land
old time uſed, and according as the Caſe requir
(14.) And if in ſuch Caſe or other like, before
time any Juſtices have judged Treaſon, and for
cauſe the Lands and Tenements have come into
Kings hands as forfeit, the chief Lords of the
ſhall have the Eſcheats of the Tenements holde
them, whether that the ſame Tenements be in
Kings hands, or in others, by gift, or in other man
(15.) Saving always to our Lord the King the Y
and the Waſte, and the forfeitures of Chatt
which pertain to him in the Caſes above nam
(16.) And that the Writs of *Scire Facias* be gran
in ſuch Caſe againſt the Land-Tenants, without o
Original, and without allowing any Protection
the ſaid Suit. (17.) And that of the Lands wh
be in the Kings hands, Writs be granted to
Sheriffs of the Counties where the Lands be, to
liver them out of the Kings hands without delay,

The Comment.

Reason is derived from *Trahir*, which signifies Treacherously to betray; when it concerns Government and the Publick, 'tis called *High ason*, but against particular persons, as a Wife ng her Husband, a Servant his Master, *&c.* it is *y Treason.*

High Treason in the Civil Law is called *Crimen æ Majestatis*, a *Crime wronging Majesty*, but ur Common-Law-Latine, *Alta proditio*, and in ndictment for this offence the word *Proditorie* t be in.

efore the making this Act, so *many things* were ged as *High Treason*, That no man knew how have himself: Now by this Statute, the particu- of that Grand Crime are reckoned up, and all rs excluded, till declared by Parliament. And settling of this Affair was esteemed of such Im- ance to the Publick-Weal, That the Parliament rein this *Act* passed, was called long after *Be- ssum Parliamentum, the Blessed Parliament.*

he substance of this Statute is branched out by Lord *Cook* 3d. part of Instit. fol. 3. into six ds, *viz.*

he first concerning Death, by compassing or gining the death of the King, Queen, or Prince, declaring the same by some *Overt* Deed. By ng and murdering of the Chancellor, Treasurer, ces of either Bench, Justices in *Eyre*, Justices of ize, Justices of *Oier* and *Terminer*, In their Places g their Offices.

he second is to Violate, that is to Carnaly know Queen, the Kings Eldest Daughter unmarried, Princes Wife.

he third is, Leavying War against the King.

The

The fourth is, Adhereing to the Kings Enem withing the Realm or without, and declaring fame by ſome overt Act.

The fifth is, Counterfeiting of the Great, the vy Seal, or The Kings Coin.

The ſixth and laſt, by bringing into this Re Counterfeit Mony to the likeneſs of the Kings C

Now as to the particularl expoſition of the ſe parts of this Statute:

1. *When a man* doth compaſs, &c. in the O nal it is *Quant Home*, which extends to both Se but one that is *Non compos mentis*, or an In within the Age of diſcretion is not included; bu *Aliens* within the Realm of *England*, being the under the Kings Protection, and owing a Local legiance, if they commit Treaſon may be puniſh this Act, but otherwiſe it is of an *Enemy*.

2. *To compaſs and Imagine*, Is to contrive, de or intend, the death of the King; but this muſt declared by ſome Overt Act. But declaring by open Act a deſign to *Depoſe* or *Impriſon* the King an Overt Act to manifeſt the compaſſing his de For they that will depoſe their King, will not ſtic Murder him, rather than fail of their end, and (as K *Charles* the Firſt excellently obſerved, and lame bly experienced) *There are commonly but few between the Priſons and the Graves of Princes*.

3. By the word *King*, is intended 1. A K before his Coronation, as ſoon as ever the Crown ſcends upon him, for the Coronation is but a C mony. 2. A King *de Facto*, and not *de Jure*, King within this Act, and a Treaſon againſt hi puniſhable, tho the Right Heir get the Cro 3. A Titular King, as the Husband of the Quee not a King within this Act, but the Queen is, for word *King* here includes both Sexes.

4. What is to be underſtood by *the Kings E Son and Heir within this Act*? I anſwer, 1. A ſec

after the death of the firſt Born, is within the ſt, for he is then Eldeſt. Secondly, The Eldeſt of a Queen Regnant is as well within the Statute, of a King. Thirdly, The Collateral Heir Appat or Preſumptive is not with this Statute. *Roger rtimer* Earl of *March* was in *Anno Dom.* 1487. *Rich.* 2.) Proclaimed Heir Apparent. *Anno* 39. *n.* 6. *Richard* Duke of *York* was likewiſe Proimed Heir Appaarent, and ſo was *John de la olen*, Earl of *Lincol*, by *Rich.* 3. And *Henry* rqueſs of *Exeter*, by King *Henry* the 8. But ne of theſe or the like are within the Purvieu of Statute, ſaith my Lord *Coke*, 3. *Inſtit.* fol. 9. 5. Note, Whereas in the Printed Statute Books, here ſaid, *probably Attainted*, the ſame is a great or, For the words of the Record are *Et de ceo ROVABLEMENT ſoit Attaint, And ſhall be reof PROVABLY Attaint*, And I cannot but mire, that ſuch a *Groſs* miſtake ſhould be ſuffered, ce my Lord *Coke* has ſo expreſly obſerved the ference, in theſe words following 3. *Inſtit.* fol. 12. *this Branch* (ſays he) *four things are to be obved.* 1. *This word* [*Provablement*] *Provably, t is, upon* direct and manifeſt proof, *not upon* njectural preſumptions *or* Inferences, *or* ſtrains Wit, *but upon good and ſufficient proof. And rein the Adverb* [Provablement] provably, *hath a at force, and ſignifieth* a direct and plain proof, *ich word the King, the Lords, and Commons in rliament did uſe, for that the offence was Hainous, d was ſo heavily and ſeverely puniſhed, as none er the like, and therefore the offender muſt* Prova- *be Attainted, which words are as forcible*, as up- direct and manifeſt proof. *Note, the word is* [Probably] *for them* Commune Argumen- *might have ſerved ; but the word is,* rovably] *be Attainted. Secondly, This word* ttaint] *neceſſarily implyeth that he be proceeded with,*

with, and Attainted according to the due C
and proceedings of Law, and not by Ab
power, *or by other means, as in former time*
been uſed. And therefore if a man doth adh
the Enemies of the King, or be ſlain *in open*
againſt the King, or otherwiſe dye *before the*
tainder of Treaſon, he forfeiteth nothing, *b*
(as this Act ſaith) he is not Attainted: *wh*
this Act hath altered that, which before this
in Caſe of Treaſon was taken for Law, A
Statute of 34. E. 3. Cap. 12. *ſaves nothing*
King, but that which was in Eſſe, *and perta*
to the King at the making of that Act. And
appeareth by a Judgment in Parliament in An
H. 6. Cap. 1. *That* Jack Cade being ſlain *in*
Rebellion could no way be puniſhed, or forfe
thing, and therefore was Attainted by that A
High Treaſon. Thirdly, *Of open Deed, per*
tum Factum, theſe words ſtrengthen the forme
poſition of [*Provablement*] an *Overt Act* mu
alledged in every Indictment upon this Act
proved. Compaſſing by bare words is not an
Act, as appears by many *Temporary* Statutes ag
it. But there muſt be ſome open Act, which
be *manifeſtly proved.* As if divers do Con
the death of the King, and the manner how,
thereupon provide *Weapons, Powder, Poiſon, Ha*
ſend Letters, or the like, for the Execution of
Conſpiracy. If a man be Arraigned upon an In
ment of High Treaſon, and ſtand *Mute* [th
refuſe to Plead] he is not to be *Preſſed* to d
but ſhall have the ſame Judgment, and incur
forfeiture, as if he had been Convicted by *Verd*
had Confeſſed it. For this ſtandeth well with
word [*Provablement*] for *fatetur facinus qui*
dicium fugit. But otherwiſe it is in caſe of
Treaſon, Murder, or other Felony. If a
ject Conſpire with a Forrein Prince to Invade
Re

alm by open Hoſtility, and prepare for the ſame ſome *Overt Act*, this is a ſufficient Overt Act for death of the King. Fourthly, The Compoſiti- and Connexion of the words are to be obſerved, [*Thereof be Attainted by open Deed*] This (as reſolved by the Juſtices in *Eaſter* Term 35. of .) relateth to the ſeveral and diſtinct Treaſons re expreſſed (and ſpecially to the *Compaſſing and gination of the death of the King*, &c. for is a *ſecret* in the heart) and therefore one of n cannot be an *Overt Act* for another, as for ex- ple, A Coſpiracy is had to Leavy War, this (as been ſaid and ſo reſolved) is no Treaſon by this until it be Leavyed, therefore it is no Overt Act, anifeſt proof of the Compaſſing the death of King within this Act, for the words are [*de &c. thereof*] that is, of the Compaſſing of the h. Diverſe latter Acts of Parliament have Or- ed, That Compaſſing by bare words or ſayings ld be Treaſon, but are all either Repealed or ired (*Except only that of the* 12. *Car.* 2. *herein r recited, which is only to be in force during the of his preſent Majeſty, whom God preſerve*) it was wont to be ſaid bare *Words* may make eretick, but not a Traitor, without an Overt . And the Wiſdom of the Makers of this Law ld not make *Words only* to be Treaſon, ſeeing variance commonly amongſt the Witneſſes is the ſame, as few of them agree together. But rds be ſet down *in Writing* by the Delinquent lf, That is a ſufficient Overt Act within this e.

the Preamble of the Statute of 1. *Mar.* (concer- the Repeal of certain Treaſons declared after *tatute* of the 25. of *Edw.* 3. and before that and bringing back all things to the meaſures Statute) It is agreed by the whole Parliament *Laws juſtly made for the preſervation of the*

Com-

Common-wealth, without extream punishment, more often obeyed and kept than Laws and Stat made with great and extream punishments. in special such Laws and Statutes so made, whe not only the Ignorant and rude unlearned people, also learned and expert people minding honesty oftentimes trapped and snared, yea many t for Words Only, *without other Fact or Deed do perpetrated.* Therefore this Act of 25. *Edw.* doth provide that there must be an Overt Act. words without any Overt Act, are to be punis another degree, as an high Misprision.

By people of their condition] That is *per Pare* their *Equals.*

7. As to Treason *by Leavying War against King*, we must note that tho Conspiring or C passing to Levy War, without a War *de Facto* no Treason, yet if many Conspire a War, and some few Actually Levy it, all are guilty of the T son. Raising a Force to burn or throw down a ticular Inclosure is only *a Riot*, but if it had to have gone from Town to Town to throw d all Inclosures, or to change Religion, or the it were Levying of War, because the intended chief is Publick. Holding a Fort or Castle ag the Kings Forces, is Leavying of War.

8. As touching the *Interpretative Treason Killing the* Chancellor, Treasurer, Justice of or the *other* Bench, Justice in *Eyre*, or of *A* or *Oier* and *Terminer*. Note, 1. This extend only to the persons here named, not to the L Steward, Constable, or Marshal, or Lords of liament. Secondly, It extends to those only d their Office. Thirdly, It extends only to Ki not Wounding without Death

But by the Stat. 3. *H.* 7. C. 14. Compassi Kill the King or any of his Council, is made Fe

9. C

9. Counterfeiting the *Great* or *Privy Seal* is Treason; but it must be an *Actual* Counterfeiting thereof, *compassing* to do it is no Treason: Affixing the Great Seal by the Chancellor without Warrant, is no Treason: Fixing a new Great Seal to another Patent, is a great *Misprision*, but no Treason, being not a Counterfeiting within this Act: But Aiders and Consenters are within this Act. The Counterfeiting of the Privy Signet or Sign Manual, is no Treason within this Act, but made so by the Statute, 1 *Mar.* c. 6.

10. Treason concerning *Coin*, is either *Counterfeiting* the Kings *Coin*, and this was Treason at Common Law, and Judgment only as of Pettit Treason, but Clipping, *&c.* being made Treason by subsequent Statutes, the Judgment is to be Drawn, Hang'd, and Quarter'd. *Money* here extends only to the Proper Money of this Realm. But now by the 1 *M.* c. 6. Forging or Counterfeiting Money made current by Proclamation, is High Treason, and by 5 *Eliz.* c. 3. Forging of Forreign Coin, not current here, is Misprision of Treason in the Forgers, their Aiders and Abettors.——And note that the bare Forging of the Kings Coin, without Uttering, is Treason.

The second Offence concerning Money, here declared to be Treason, is, If any person *bring into this Realm Counterfeit Money*: Where note, 1. It must be Counterfeit: 2. Counterfeited to the similitude of English Money: 3. It must be brought from a Forreign Realm, and therefore not from *Ireland*: 4. It must be brought *knowingly*: 5. *Brought*, and not merely uttered here. But by the Statute *De Moneta*, if false or clipt money be found in a persons hands, and he suspitious, he may be Arrested till he can clear himself: 6. He must merchandize therewith, that is, make *payment* thereof.

11. As this Statute leaves all other doubtful matters to be declared Treason in Parliament, but not to be

punish'd as such till so declared. So in succeedi
Kings Raigns abundance of other matters were
clared Treason, which being found very grievo
and dangerous, by the Statute of 1 *Mar. Cap*
it is Enacted, *That thenceforth no Act, Deed,*
Offence being by Act of Parliament, or Statu
made Treason, Petty Treason, or Misprision of Tre
son, by Words, Writing, Ciphering, Deeds, or othe
wise howsoever, shall be taken, had, Deemed or A
judged to be High-Treason, Petty Treason, or M
prision of Treason, but only such as be declared a
expressed to be Treason, Petty Treason, or Misprisi
of Treason, by this Statute of the 25. Edw. 3.

12. The Offences made High Treason by Statut
since this first of *Mary*, are as follow.

Refusing the Oath of *Supremacy* upon seco
Tender, is *Treason* by 5. *Eliz. Cap.* 1. but no C
ruption of Blood, so likewise is Extolling the Po
of the Bishop of *Rome*, a *Premunire*, and the brin
ing in of *Bulls*, or putting them in Execution, or *R*
conciling to the Church of *Rome*, is Treason by t
same Statute. Bringing in *Agnus Dei's* is a Prem
nire, 23. *Eliz. C.* 1. Also absolving Subjects from th
Obedience, or Reconciling them to the Obedien
of *Rome* is Treason, 27. *Eliz. Cap.* 2. So is it lik
wise for a Priest coming into *England*, not subm
ting in two days. The like for *English* men in F
reign Seminaries.

But besides these *Old Treasons*, since the hap
Restauration of His Majesty, The zealous rega
his Subjects in Parliament had, for the *safety* of
Sacred Person and Government, thought fit to p
fer and make the Statute following.

Anno Regni Car. 2. Regis, decimo tertio.

CAP. I.

An Act for Safety and Preservation of His Majesties Person and Government, against Treasonable *and* Seditious *Practises and Attempts.*

"*THe Lords and Commons Assembled in Parliament, deeply Weighing and Considering the Series and Calamities, of well nigh twenty years, ore your Majesties Happy Return, and withal Reing on the Causes and Occasions of so great and rable Confusions, do in all humility and thankss acknowledge your Majesties incomparable Grace Goodness to your People, in your Free and Gene-Pardon, Indempnity and Oblivion, by which your esty hath been pleased to deliver your Subjects, only from the* Punishment, *but also from the* Re-ch *of their former Miscarriages, which unexled Piety and Clemency of your Majesty hath Ened the Hearts of us your Subjects with an ardesire to express all possible Zeal and Duty in Care and Preservation of your Majesties Per-in whose Honour and Happiness consists the good welfare of your people) and in preventing (as as may be) all* Treasonable *and* Seditious *Pra-and Attempts for the time to come. (2.) And se the Growth and Increase of the late Troubles Disorders, did in a very great measure proceed a multitude of* Seditious Sermons, *Pamphlets Speeches, daily Preached, Printed and Published, a Transcendent boldness, defaming the Person Government of your Majesty and your Royal Fa-wherein men were too much Encouraged, and*

(above all) from a wilful mistake of the Supre
and Lawful Authority, whilst men were forward
cry up and maintain those Orders and Ordina
Oaths and Covenants, to be Acts Legal *and W*
rantable, which in themselves had not the least Co
of Law or Justice to support them, from which
of Distempers, as the present Age is not wh
freed, so Posterity may be Apt to Relapse into th
if a timely Remedy *be not provided.* (3.) *We th*
fore the Lords and Commons in Parliament *Ass*
bled, having duly considered the Premisses, and
membring that in the thirteenth year of the Reig
Queen Elizabeth *of ever blessed Memory, a r*
good and profitable Law was made, for Preserv
on of Her Majesties Person, *do most humbly bes*
your most Excellent Majesty, that it may be
acted. (4.) And be it Enacted *by the Kings*
Excellent Majesty, by and with the Advice and C
sent of the Lords and Commons in this present P
liament Assembled, and by Authority of the Sa
That if any Person or Persons whatsoever, after
four and twentieth day of June, *in the year of*
Lord one thousand six hundred sixty and
during the Natural Life of our most Gracious
veraign Lord the King, *(whom God Almighty*
serve and Bless with a Long and Prosperous Re
shall within the Realm or without, Compass, I
gine, Invent, Devise, or Intend Death or De
ction, or any Bodily Harm, tending to the Deat
Destruction, Maim, or Wounding, Imprisonmen
Restraint of the Person of the same our Sover
Lord the King. (5.) *Or to deprive or depose*
from the Style, *Honour, or Kingly* Name *of th*
perial Crown of this Realm, or of any other
Majesties Dominions or Countries. (6.) *To Levy*
against His Majesty within this Realm or wi
(7.) *Or to move or stir any Forraigner, and S*
gers with force to Invade *this Realm, or any*

s Majesties Dominions or Countries, being under s Majesties Obeysance. (8.) *And such Compas-gs, Imaginations, Inventions, Devices, or Inten-ns, or any of them, shall express, utter or declare any* Printing, Writing, Preaching, or malitious and viſed Speaking, *being Lawfully Convicted thereof, on the Oaths of* two Lawful and Credible Witnes-*upon Tryal, or otherwise Convicted or Attainted due Course of Law, then every such person and sons, so as aforesaid offending, shall be deemed, lared and Adjudged to be* Traytors, *and shall suf-pains of Death, and also lose and Forfeit as in es of High Treason.*

2. *And be it further Enacted by the Authority reſaid, That if any person or persons at any time er the four and twentieth day of* June, *in the year our Lord, one thousand six hundred sixty and one,* ing His Majesties Life, *shall Malitiously and wisedly publish or affirm the King to be an* Here-k or Papist, *or that* he endeavours to Introduce pery. (2.) *Or shall Malitiously and Advisedly by nting, Writing, Preaching, or other Speak-, Express, Publish, Utter or Declare any words, ences, or other thing or things, to* Incite or stir the *people to Hatred or dislike of the Person of s Majesty, or the Established Government.*) *Then every such person and persons, being there-Legally Convicted, shall be disabled to have or en-, and is hereby disabled, and made incapable of ing, holding, enjoying, or exercising* any Place, fice, or Promotion *Ecclesiastical, Civil or Mili-, or any other Imployment in Church and State, er than that of his* Peerage, *and shall likewise liable to such further and other Punishments, as he Common Laws, or Statutes of this Realm may nflicted in such Cases.* (4.) *And to the end that man hereafter may be misled into any Seditious or quiet Demeanour, out of an opinion that the Par-*

liament Begun *and Held at* Westminster, *upon* ... *third day of* November, *in the year of our L...* *one thousand six hundred and forty, is yet in be...* *which is undoubtedly* Dissolved and Determin... *and so is hereby declared and adjudged to be ...* *dissolved and determined.* (5.) *Or out of an op...* *that there lies any Obligation upon him from* ... Oath, Covenant *or Engagement whatsoever, to* ... *deavour a Change of Government, either in Chu...* *or State.* (6.) *Or out of an Opinion*, that b... Houses of *Parliament*, or either *of them hav...* Legislative Power *without the King.* (7.) ... *which Assertions have been seditiously maintai...* *in some Pamphlets lately Printed, and are d...* *promoted by the Active Enemies of our Peace ...* *Happiness.*

3. *Be it therefore further Enacted by the ...* *thority aforesaid, That if any person or perso...* *any time after the four and twentieth day of J...* *in the year of our Lord, one thousand six hund...* *sixty and one, shall Malitiously and Advisedly, ...* *Writing*, Printing, Preaching *or other* Speaki... *Express, Publish, Utter, Declare or Affirm, T...* *the Parliament* Begun *at* Westminster *upon ...* *third day of* November, *in the year of our L...* *one thousand six hundred and forty, is not ...* *Dissolved*, or is not Determined, *or that it ough...* *be in being, or hath yet any Continuance or E...* *stence.* (2.) *Or that there lies any Obligation ...* *him, or any other person from any Oath*, Co... nant *or Engagement whatsoever, to endeavou...* Change of Government, *either in* Church or S... (3.) *Or that both Houses of Parliament, or ei...* *House of Parliament, have or hath a* Legisla... Power *without the King, or any other words t...* *same Effect.* (4.) *That then every such person ...* *persons so as aforesaid offending, shall incurr the ...* *ger and penalty of a* Premunire *mentioned ...*

St...

Statute made in the ſixteenth year of the Reign of King Richard *the Second.* (5.) *And it is hereby alſo declared, That the Oath uſually called the* Solemn League and Covenant, *was in it ſelf an* Unlawful *Oath, and Impoſed upon the Subjects of this Realm, againſt the* Fundamental Laws *and Liberties of this Kingdom.* (6.) *And that all Orders and Ordinances, or pretended Orders and Ordinances of both or either Houſes of Parliament, for impoſing of Oaths, Covenants or Engagements, Levying of Taxes, or Raiſing of Forces and Arms, to which the* Royal Aſſent, *either in Perſon or by Commiſſion, was not expreſly had or given, were in the firſt Creation and Making, and ſtill are, and ſo ſhall be taken to be* Null and Void *to all Intents and Purpoſes whatſoever.* (7.) *Provided nevertheleſs, That all and every perſon and perſons, Bodies Politick and Corporate, who have been, or ſhall at any time hereafter be queſtioned for any thing Acted or Done by Colour of any the Orders or Ordinances herein before mentioned and declared to be Null and Void, and are Indempnified by an Act, Intituled,* An Act of Free and General Pardon, Indempnity and Oblivion, *made in the twelfth year of His Majeſties Reign that now is, or ſhall be Indemnified by any Act of Parliament, ſhall and may make ſuch uſe of the ſaid Orders and Ordinances for their Indemnity according to the true intent and meaning of the ſaid Act, and no other, as he or they might have done, if this Act had not been made; any thing in this Act contained notwithſtanding.*

4. *Provided always, That no perſon be Proſecuted for any of the Offences in this Act mentioned (other than ſuch as are made and declared to be* High Treaſon) *unleſs it be* by order of the Kings Majeſty, his Heirs or Succeſſors, under his or their Sign Manual, or by order of the Council Table of his Majeſty, his Heirs or Succeſſors, directed unto the Attorney Ge-

neral for the time being, or ſome other of the Cou
cil learned to His Majeſty, *His Heirs or Succeſſor
for the time being.* (2.) *Nor ſhall any perſon
perſons by vertue of this preſent Act incur any t
Penalties herein before mentioned, unleſs he or th
be Proſecuted* within ſix months *next after the offen
Committed, and* Indicted thereupon within thr
months after *ſuch Proſecution; any thing herein co
tained to the contrary notwithſtanding.*

5. *Provided always, and be it Enacted, That
perſon or perſons ſhall be* Indicted, *Arraigned, Co
demned, Convicted, or Attainted for any of t
Treaſons or Offences aforeſaid, unleſs the ſame Offe
der or Offenders be thereof* Accuſed *by the Teſtimo
and Depoſition* of two Lawful and Credible W
neſſes *upon Oath.* (2.) *Which Witneſſes at the ti
of the ſaid Offender or Offenders Arraignmen
ſhall be brought in perſon before him or them Fa
to Face, and ſhall openly avow and maintain up
Oath, what they have to ſay againſt him or the
concerning the Treaſon or Offences contained in t
ſaid Indictment, unleſs the party or parties A
raigned ſhall willingly without violence* Confeſs t
ſame.

6. *Provided likewiſe, and be it Enacted, Th
this Act, or any thing therein contained, ſhall n
extend to deprive* either of the Houſes of Parli
ment, *or any of their Members, of their juſt Ant
ent Freedom, and Priviledge of* Debating *any ma
ters or buſineſs which ſhall be propounded or debat
in either of the ſaid Houſes, or at any* Conferenc
or Committees *of both or either of the ſaid Hou
of Parliament, or touching the* Repeal *or Alterat
of any* Old, *or preparing any* New Laws, *or the
dreſſing of any* Publick Grievance; *but that
ſaid Members of either of the ſaid Houſes,*

the Assistants of the House of Peers and every of them, shall have the same freedom of Speech, *and all other Priviledges whatsoever, as they had before the making of this Act; any thing in this Act to the contrary thereof in any wise notwithstanding.*

7. *Provided always, and be it ordained and enacted, That* no Peer *of this Realm shall be Tryed for any Offence against this Act, but by his Peers;* (2) *And further, that every Peer who shall be Convicted of any Offence against this Act, after such Conviction, be disabled during his Life,* to sit in Parliament, *unless His Majesty shall graciously be pleased to pardon him;* (3) *And if His Majesty shall grant his Pardon to any* Peer *of this Realm, or Commoner Convicted of any Offence against this Act, after such Pardon Granted, the Peer or Commoner so pardoned* shall be Restored *to all Intents and purposes, as if he had never been Convicted, any thing in this Law to the contrary in anywise notwithstanding.*

Notes.

THough the wisdom our Legislators is not generally for bringing *words* within the compass of *Treason*, yet upon emergent occasions it has been done, but then with a *Temporary Limitation*, as by the Statute 13 *Eliz.* here referred unto, during the Life of that Queen; In imitation whereof this present Act is made to remain in force during only the Life of our present Soveraign King *Charles* the Second, And the reasons for making this Temporary Law are assigned in the *preamble.*

This Statute makes *three sorts of Offences.* Some *High Treason*; some that *disable* and incapacitate from holding any *place* or *Office*; and some that are punishable by *Premunire.*

As to the first, 'tis hereby declared to be High

Treason during the Life of His present Majesty,

1. Within or without the Realm to compass or imagine the Death, Destruction, Maim, Wounding, Imprisonment or Restraint of the King.

2. Or to deprive or *depose* him, or *Levy War* against him, within the Realm or without, or to stir Forreigners to *invade* the Realm.

If such Compassings or Intentions be expressed, uttered or declared by any *Printing*, *Writing*, *Preaching*, or malitious and advised *speaking*.

Being legally Convicted thereof upon the Oaths of *two lawful* and CREDIBLE Witnesses: [By which words, the Statute seems to injoin and require some *more than ordinary* Scrutiny into the Credit of the Witnesses, for otherwise *Legal* had been enough, (and so is every man not Convict of *Perjury*) but Witnesses in this Case must not be only *Legal* but *Credible*, not infamous, scandalous, or suspected.]

As to the second, Maliciously and Advisedly to publish or affirm during his present Majesties Life that the King is--an *Heretick*--or--a Papist--or that he *endeavours to introduce Popery*.

Or maliciously and advisedly by Writing, Printing, Preaching, or speaking to utter, express or declare any Words, Sentences or thing, to stir up the people to *hatred or dislike of the Person of His Majesty* or the establisht Government.

Whoever is legally Convicted of any of these Crimes, shall be disabled to hold any *place Office or promotion*, Ecclesiastical, Civil or Military. And besides be liable to such punishments as by the Common Laws or Statutes may be inflicted.

As to the third, to declare, publish, or affirm, first that the *Old long Parliament* of 40 is not *dissolved*, or ought to be in being. Secondly, That there lies any obligation on ones self, or any other person, from any *Oath*, Covenant, or Engagement, to endeavour change of Government either in Church or State.

Third

Thirdly, that *either or both Houses* of Parliament have a Legiſlative power without the King, or any other words to the ſame effect.

The perſon ſo offending ſhall incur the penalty of a *Premunire*, which by the Statute of 16 *Rich.* 2 *Cap.* 5. here refer'd unto, is this, *viz.* To be put out of the Kings *Protection*, their Lands and Tenements, goods and Chattels, *Forfeited* to the King, and their bodies to be ſeized, &c. But in this Act of the 13 *Caroli*, there are theſe Proviſo's.

1. As for the *two laſt Sorts* of Offences that are not Treaſon, none ſhall be proſecuted but by *order of the King*, under his Sign Manual, or of the privy Council.

2. As for the crimes made *Treaſons*, none ſhall be Indicted or Convicted unleſs they be *ACCUSED* by two Lawfull and *Credible* Witneſſes. Touching the Addition of the word *Credible* to Lawfull, (which is here again repeated) we have ſpoken before; But muſt here further obſerve,

1. That by theſe expreſs words, this Statute provides that no man ſhall be *Indicted*, [that is, have a Bill found againſt him] upon this Statute for Treaſon, unleſs he be *Accuſed*, [that is, unleſs the matter be ſworn againſt him before the Grand Jury] by two not only Lawful, but CREDIBLE Witneſſes, for the words are not only, *he ſhall* not be *Convicted* [which is the work of the *Petty Jury* or Jury of Life and Death, as 'tis commonly called,] But he ſhall not be *Indicted* [which is the buſineſs of the Grand Jury] And therefore Grand-Juries beſides their *general and ordinary Right* and power by Law, have when any perſon is Indicted upon *this Statute*, a ſpecial right and direction from the *Act it ſelf* to Examine and be well ſatisfied in the *Credibility* of the Witneſſes; which if duly conſidered would perhaps much mitigate the Clamours lately raiſed againſt ſome Juries for their Returning ſome Bills before them *Ignoramus*, though the matters therein were roundly

ſworn

ſworn unto by *Legal*, but probably iu their eſteem and Judgment, as they were upon their Oaths, not ſufficiently *Credible* Witneſſes; eſpecially when their *Stories* were no leſs *Incredible* than their perſons.

Secondly, Note that as a perſon cannot be Convicted or Indicted, ſo neither can he be ſo much as *Committed* for any Offence made Treaſon by this Act, by or upon the Oaths of any *ſingle Witneſs*, though there ſhould be never ſo much preſumption that more may come in againſt him before he be brought to Trial, for the words are——*Unleſs he be thereof accuſed by the Teſtimony and depoſition of Two Lawful and Credible Witneſſes, which Witneſſes at his Arraignment ſhall be brought before him face to face*, &c. So that 'tis evidently intended the original accuſation before the Juſtice or Magiſtrate that ſhall Commit the perſon muſt be by two ſuch Witneſſes, and that the ſame two Witneſſes (and not *others*, leaving them that firſt charged him, out, though yet others no doubt may be *added* to them) muſt give Evidence to the Grand Jury, and at his Trial.

3. There is in this Act a *third proviſo*, that no perſon ſhall incur *any* the Penalties in this Act mentioned *unleſs*, 1. He be *Proſecuted*, [that is charged before a Magiſtrate or Committed] within ſix Months after the Offence Committed. Secondly and unleſs he be Indicted thereupon within three Months after ſuch Proſecution. So that if in either of theſe Reſpects the time be elapſed, the Grand Jury ought not to find the Bill.

4. Provided, this Act ſhall not infringe the *Priviledges* or Freedom of Debates in either of the Houſes of Parliament or any Committee of them.

5. That a *Peer* ſhall be tryed for any Offence againſt this Act by his Peers, but if Convicted, ſhall be diſabled to ſit in Parliament during Life. And thus much for what is Treaſon at this day.

By the Statute of 1 and 2 *Phil.* and *Mar. cap.* 1

ll Trials for Treaſon ſhall be only according to the ourſe of the Common Law. And though the grea- r part of that Statute, being Temporary, be expi- d, yet this Clauſe is ſtill in Force.

The Judgment in all Caſes of High Treaſon, except r Counterfeiting Coin (for a man) is, *That he ſhall e drawn on an Hurdle or Sledg to the place of Ex- cution and there be Hanged by the Neck, to be cut own being yet alive, his Privy Members cut off, his owels ript up, taken out, and burnt before his face, is Head ſevered from his Body, his Body divided in- four Quarters, which are to be diſpoſed of as the ing ſhall order*——But for Counterfeiting Coin, nly *Drawn and Hanged.* And in both Caſes for a oman (for Modeſty-ſake) it is only that ſhe ſhall e *Burnt.*

The reaſons or ſignification of this horrid Judg- ent on a man for *Treaſon*, are thus by ſome rendred nd Interpreted.

1. He is drawn on a *Sledg* or *Hurdle* on the ground the Dirt, to ſhew that his *Pride* is brought down, r Treaſon commonly ſprings from *Ambition.*

2. On this Hurdle he is drawn *backward*, to ſhew at his Actings have been contrary to Order, un- atural and *Prepoſterous.*

3. He is *Hanged* between Heaven and Earth, as *worthy of either.*

4. He is cut down yet alive, and his *Privities cut ff*, to ſhew that he was unfit to Propagate any *Po- erity.*

5. His *Head* is ſevered from his Body, becauſe s miſchevious *Brain* contrived the Treaſon.

6. His Body is *divided*, to ſhew that all his Ma- inations and Devices are *torn to pieces*, and brought nought; and into *four parts*, that they may be attered towards the four Quarters of the World.

Heading being part of the judgment in Treaſon. e King commonly to perſons of Quality Par-

dons

dons all the reſt, of the Sentence, and ſo they are ly *Beheaded.* But if a perſon be Attainted of *Murder* or any other *Felony*, if he be Beheaded, 'tis Execution of the Judgment, becauſe there the Judgment always is, that he *be Hanged till he be dead*, which cannot be altered. So that had Count *Coningſmark* lately been Convicted and Condemned for the Murder of Eſquire *Thynn*, all his *Guinies* his *Friends* could not have preſerved him from the *Gallows*, unleſs they could have got an intire *Pardon.*

Any perſon being Indicted for Treaſon, may *Challenge* [that is except againſt or refuſe] *Five and Thirty* Jurors, *peremptorily* [that is, for his pleaſure for reaſons beſt known to himſelf and without aſſigning any Cauſe to the Court.] But if he Challenge more, that is above three full Juries, he Forfeits his Goods, and Judgment of *Pein fort & dure*, [that of being *preſſed* to Death] ſhall paſs upon him as one that refuſeth the Trial of the Law.

In Caſes of *Murder* and *Felony* a man cannot Challenge peremptorily above the number of Twenty; But with cauſe he may except againſt more. All this is by the Stat. of 22 *H.* 8. *cap.* 14.

And certainly ſince the Law of *England*, which is a *Law of Mercy*, does in *Favour of Life*, not only order a man to be Tryed by a *Jury* of his Country and *Equals*, but alſo allows him to refuſe, and have Liberty of excepting againſt ſo many of thoſe as ſhall be *Impanelled* for that purpoſe; It cannot be ſuppoſed that the ſame Law ever intended that the Prisoner ſhould be denyed *a Copy of the Pannel* of his Jury, that ſo by the Information of his Friends or otherwiſe, he may know their *Qualities, Circumſtances*, and *Inclinations*; for how elſe ſhall he know whom to *Challenge peremptorily*, and whom to *Challenge with Cauſe*; to allow a man ſuch Liberty of Challenge, and give him no opportunity of ſuch

quiry, is but to *mock the Prisoner*, to whom possibly the whole Jury by *face and name* may be utter Strangers; and sure the wisdom of our Laws never thought every Prisoner so skilled in *Metoposcopy*, that meerly by *looking* on a parcel of men he could tell which of them were *indifferent*, and which biassed against him.

Another Statute of King *Edward* the third.

Anno 2. *Edw.* 3. *cap.* 2.

In what Cases only *Pardon* of Felony shall be Granted, *&c.*

ITem, *Whereas Offenders have been greatly encouraged, because the Charters of Pardon have been* easily granted *in times past of Man-slaughters, Roberies, Felonies, and other Trespasses against the Peace,* (2) *It is ordained and Enacted that such Charters* shall not be granted, but only where the King may do it by his Oath, *that is to say, where a man slayeth another in his* own Defence, *or by* Misfortune. (3) *And also they have been encouraged because that the* Justices *of Goal-Delivery, and of Oyer and Terminer,* have been procured by great men, *against the Form of the Statute made in the 27th Year of the Reign of King* Edward, *Grandfather to our Lord the King that now is, wherein is Contained that Justices Assigned to take Assizes, if they be* Lay-men, *shall make deliverance, and if the one be a Clerk, and the other a Lay-man, that the* Lay-Judge *with another of the Countrey associate to him, shall deliver the Goals.* (4) *Wherefore it is Enacted, that Justices shall not be made against the Form of the said Statute;* (5) *And that the Assizes, Attaints, and Certifications be taken before the Justices commonly*

monly Aſſigned, which ſhould be good men and La ful, having knowledg of the Law, and none oth after the Form of another Statute made in the ti of the ſaid King Edward *the firſt. (6) And th the* Oyers and Terminers *ſhall not be granted, b before the Juſtices of the one Bench or the other, the Juſtices Errants, and that for great hurt, or h rible Treſpaſſes, and of the Kings ſpecial Grace, ter the Form of the Statute thereof ordained in ti of the ſaid Grandfather, and none otherwiſe.*

The Comment.

Touching this Statute and ſeveral othe to the ſame purpoſe; as 14. *Edw.* 3 *ca* 14. and 10. *Edw.* 3. *cap.* 2. and 13. 2. *cap.* 1. and 16. *R. cap.* 6. &c.

We ſhall only give you the words of *Co* in the third part of his Inſtit. fo. 236.

What things the King *may pardon*, and i what manner, and what *he cannot pa don*, falleth now to be treated of.

IN caſe of death of man, Robberies and Felon againſt the Peace, divers Acts of Parliament ha *Reſtrained the power of granting Charters of pardon* firſt, that no ſuch Charters ſhall be granted, but caſe *where the King may do it by his Oath*; *Secon ly*, That no man ſhall obtain *Charters out of Parli ment*, Stat. 4. *Edw.* 3, *cap.* 13. And accordingly a Parliament Roll it is ſaid, [for the Peace of t Land it would much help, if good Juſtices were ap pointed in every County, if ſuch as be let to mainpri do put in good Sureties, as Eſquires or Gentlemen And that *no pardon were granted but by Parliament*

Thirdly

hirdly, For that the King hath granted Pardons of
ſonies upon *falſe ſuggeſtions*, it is provided, that
ry Charter of Felony which ſhall be granted at
e Suggeſtion of any, the name of him that maketh
e Suggeſtion ſhall be compriſed in the Charter,
d if the Suggeſtion be found untrue, the Charter
ll be diſallowed. And the like proviſion is made
the Statute of 5. *H.* 4. Cap. 2. for the Pardon of
Approver.

Fourthly, It is provided that no Charter of Par-
n for Murder, Treaſon, or Rape, ſhall be al-
wed, *&c.* If they be not ſpecified in the ſame
arter. Statute 13. *R.* 2. Before this Statute of
. *R.* 2. by the Pardon of *all Felonies*, Treaſon was
rdoned, and ſo was *Murder*, *&c.* At this day by
e Pardon of all Felonies, the death of man is not
rdoned. Theſe be excellent Laws for direction,
d for the *Peace* of the Realm. But it hath been
nceived, (which we will not queſtion) that the King
ay diſpenſe with theſe Laws by a *Non Obſtante*,
otwithſtanding,] be it General or Special (albeit we
d not any ſuch Clauſes of *non Obſtante*, notwith-
anding, to diſpenſe with any of theſe Statutes, *but*
late times) Theſe Statutes are excellent Inſtructi-
s for a *Religious and Prudent King* to follow, for
theſe Caſes, *Ut ſummæ poteſtatis Regiæ eſt poſſe*
antum velit, ſic Magnitudinis eſt velle quantum
ſſit, [As it is the higheſt Kingly power to be able
Act what he Wills, ſo it is his Greatneſs and No-
eneſs to Will only what he lawfully can.] Hereof
u may Read more in Juſtice *Standford*, Lib. 2.
ap. 35. in diverſe places of that Chapter, of his
ave Advice in that behalf. Moſt certain it is, that the
Word of God has ſet down this undiſputable General
ule, *Quia non profertur Cito Contra malos ſenten-*
a, filii hominum ſine timore ullo perpetrant, [be-
uſe Sentence againſt evil men is not ſpeedily Exe-
ted, therefore the hearts of the Children of men
are

are ſet in them to do evil] And thereupon the R
of Law is grounded. *Spes Impunitatis Continu
Affectum tribuit delinquendi*, [the hope of Impun
encourageth Offenders] *Et veniæ facilitas Incen
vum eſt Delinquendi*, [and the facility of obtain
Pardon is an Incentive to Commit Offences] Thi
to be Added, that the intention of the ſaid Act
13. *R.* 2. Was not that the King ſhould grant *a Po
don of Murder by expreſs Name* in the Charter, b
becauſe the whole Parliament conceived, that
would never Pardon Murder by ſpecial Name
the Cauſes aforeſaid, therefore was that proviſi
made, which was (as in other Caſes I have obſerve
grounded upon the Law of God, *Quicunque effu
rit humanum ſanguinem, fundetur ſanguis illiu
ad imaginem quippe Dei creatus eſt homo nec ali
Expiati poteſt, niſi per ejus ſanguinem, qui al
rius ſanguinem effuderit*, [whoſoever ſhall ſhe
mans blood, by man alſo ſhall his blood be ſhed, b
cauſe man was Created after the Image of God, n
ther can it be expiated otherwiſe than by his bloo
who ſpilt the blood of another.] And the words
every Pardon is after the Recital of the offence, *
pietate moti, &c.* we being *moved with Piety*, &c
But it can be no Piety to violate an expreſs Law
God, by letting Murder ſcape unpuniſht. Th
Coke, whereby we ſee what opinion he had of ſu
Pardons.

A brief digression concerning the Nature of APPEALS.

THis Discourse of *Pardons* puts us in mind of another kind of Legal Prosecution called an *Appeal*: of which it may be very convenient to give the Reader some brief account. You must know then for several Offences, for which a man deserveth death, and particularly for *Murder*, there are *two ways* to bring him to Answer for the same, one by *Indictment*, which is *at the Kings Suit*, and the other by *Appeal*, which is *at the Suit of a Party* which is wronged or injured by the Murder: as a *Woman* whose Husband, or a *Child*, or *Brother*, whose Father or Brother is Killed.

Now upon an Indictment, if the Offender be found *Guilty*, because its to be at the Suit of the King, it has been said by some, there may be, and *too often a Pardon*, has been obtained (tho even *That* too be *against Law*, as appears by the Premisses) But in an *Appeal* all agree, the King can grant *no Pardon*. Nay if a person be tryed by Indictment, and Acquitted, or Convicted and gets a *Pardon*, yet an Appeal may be brought, and if he be thereupon Convicted, notwithstanding such his former Acquital, or *Pardon*, he must be *Hanged*.

The word Appeal is derived from the *French* Verb *Appeller*, to Call, because he or she that brings it, Calls the Defendant to Judgment; but the meaning thereof is all one with *An Accusation*: And is peculiarly in Legal signification applyed to Appeals of *Three sorts*; First an *Appeal* brought by an Heir Male for some wrong done to his *Ancestor* whose Heir he is. Secondly, Of wrong done to an Husband, and is by the Wife only, if it be for the death of her Husband, to be Prosecuted. The third is of

wrong

wrongs done to the Appellants themſelves, as for Robbery, Rape, or *Mayhem*. *Coke* 1. *Inſtit.* Sect. 500.

Note that this Appeal muſt be brought *within a year and a day* after the Murder is committed. For afterwards it cannot be brought at all. And antiently it was cuſtomary not to bring an Indictment for the King, till after the year and the day, waiting in the mean time for the Proſecution of the Party, but this was found very inconvenient, for the Party was frequently compounded with, and at the years end the buſineſs was forgot, and ſo Offenders eſcaped Juſtice.

And therefore the ſame was altered by the Statute 3 *Hen.* 7. *Cap.* 1. Whereby it is Enacted, *That the Coroner ſhall do his Office, and the Offenders may be Arraigned at any time within the year, at the Kings Suit, but if Acquitted, yet the party within the year and day ſhould have liberty to bring an Appeal againſt ſuch perſon, either Acquitted or Attainted, if the benefit of the Clergy be not before thereof had. And in order thereunto that when any perſon happened to be Acquitted for the death of a man, within the year, the Juſtices before whom he is Acquitted, ſhall not ſuffer him to go at large, but either to remit him again to the Priſon, or elſe to let him to Bail after their diſcretion, till that the day and the year be paſſed, that ſo he may be forth coming to Anſwer an Appeal, if it ſhall happen to be brought.*

Thus that Statute; as to the *latter Clauſe* whereof you ſee the Judges have power in *Caſe of Acquittal* to keep the Party in Priſon ſtill, till the *day and year* be over. Or elſe to admit him to Bail; and tho this be left to their *Diſcretion*, yet it muſt not be ſuch a Diſcretion, as *confounds all Diſcretion*: but they muſt weigh the Circumſtances, and go according to Law and Judgment; and certainly the Law intended ſuch Bail, if any be accepted, ſhould be bound *Body*

his Body, for otherwise it seems no security. And therefore many wise men wondered the other day when Count *Coningsmark* was Acquitted on the Indictment for the Barbarous Murder of Esquire *Thynn*, that he was suffered to go so soon abroad, for being a *Stranger*, he was never like to come again into *England*, and being so *rich*, what values he to discharge the Forfeitures of his Sureties Recognizances, which likewise may be easily Compounded. At most, the *Forfeiture is to the King*, and what is that to the next Heir or Kinsman? He is by this means *Outed* of his Legal Remedy to Revenge the Blood of his near and dear Relation. ——*Sed hæc Obiter.*

The form of an Appeal of Murder.

I. C. Hic instanter Appellat W. F. &c. (In English thus) **I here instantly Appeals** W. F. **of the death of his Brother** H. C. **For that whereas the aforesaid** H. **was in the Peace of God, and the King, at** Tonbridge **in the County of** Kent, **the twenty eighth day of** March, **in the thirty fourth year of the Reign of our Lord** Charles **the Second**, &c. **at seven a Clock in the Evening of the same Day, came the said** W. F. **as a Felon of our Lord the King in a premeditated**

wrongs done to the Appellants themſelves, as for Robbery, Rape, or *Mayhem*. *Coke* 1. *Inſtit.* Sect. 500.

Note that this Appeal muſt be brought *within a year and a day* after the Murder is committed. For afterwards it cannot be brought at all. And antiently it was cuſtomary not to bring an Indictment for the King, till after the year and the day, waiting in the mean time for the Proſecution of the Party, but this was found very inconvenient, for the Party was frequently compounded with, and at the years end the buſineſs was forgot, and ſo Offenders eſcaped Juſtice.

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his Body, for otherwiſe it ſeems no ſecurity. And therefore many wiſe men wondered the other day when Count *Conningſmark* was Acquitted on the Indictment for the Barbarous Murder of Eſquire *Thynn*, that he was ſuffered to go ſo ſoon abroad, for being a *Stranger*, he was never like to come again into *England*, and being ſo *rich*, what values he to diſcharge the Forfeitures of his Sureties Recognizances, which likewiſe may be eaſily Compounded. At moſt, the *Forfeiture is to the King*, and what is that to the next Heir or Kinſman? He is by this means *Outed* of his Legal Remedy to Revenge the Blood of his near and dear Relation. ——*Sed hæc Obiter.*

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meditated Assault, with Force and Arms, &c. And upon him the said H. C. then and there Feloniously an Assault did make, and with a certain Sword, of the price of twelve pence, which he then and there in his Right Hand did hold the aforesaid H. upon his Head did strike, and one mortal wound of two Inches long in forepart of his Head, even unto the Brain, to the said H. did then and there Feloniously give; of which said wound the said H. for three days then next following did Languish, and then viz. the [such a] day of [such a month] he there died, [or if the case be so, Instantly died] And so the said W. F. as a Felon of our Lord the King, the aforesaid H. Feloniously did Kill and Murder, against the Peace of our said Lord the King, his Crown and Dignity: And that this he did wickedly and as a Felon against the Peace of God, and our Lord the King the aforesaid J. C. offers that the same

me be Deraigned as the Court of r Lord the King shall think meet.

iversity of Courts and Jurisdicti-ns, Written in the time of King *en.* 8.

1. Note, That a woman cannot now bring an Ap-l for the death of any other Ancestors, being ed there from by *Magna Charta*, Cap. 34. where-as you have heard) it is provided that none shall taken or Imprisoned upon the Appeal of any wo-n for the death of any Person, but only of *her sband.* But she may at this day bring an Appeal Robbery, *&c.* For therein she is not by that ute restrained. *Coke* 2d. Instit. fol 68.

2. The Woman thath brings an Appeal for the th of her Husband, must be his Wife, not only *Facto*, but *de Jure*, not only called and reputed, cohabiting with him, but actually and legally Mar-to him; and of such a Wife the Antient Law-ks, speak, *de morte viri Inter Brachia sua Inter-*, the Husband is killed within her Arms, that is, lst he was Legally in her possession; but that the pellant and the person killed, were not ever lawful-oupled in Matrimony, is a good Plea in an Appeal.

3. This Right of Appeal for the death of her Hus-d is annexed to her Widdow-hood, as her *Qua-ine* is, and therefore if the Wife of the Dead ry again, her Appeal is gone, even altho the d Husband should die within the year & day after Murder of the first: For she must all the while be-the Appeal be brought, continue *Fœmina viri* his Widdow, upon whose death the Appeal is ght: furthermore if she bring the Appeal du-her Widdow-hood, and take a Husband whilst depending, the Appeal shall *Abate* (that is be out

out of doors) for ever, Nay if on her Appeal hath Judgment againſt the Defendant, if afterw ſhe take an Husband before the Defendant Hanged, ſhe can never have Execution of de againſt him.

4. By the Statute of *Glouceſt.* made in the ſixth of King *Edw.* 1. *Cap.* 9. It is Enacted that if an A peal ſet forth the Deed, the year, the day, the ho the Reign of the King, and the Town where Deed was done, and with what Weapon the P was ſlain, the Appeal ſhall ſtand in effect, and ſ not be abated for default of freſh Suit, if the p ſhall Sue within the year and the day after the D done.

5. As for *the year and day* here mentioned, to be accounted for the whole year according to Calendar, and not for twelve Months, at two eight days to the Month. So likewiſe the day tended is a Natural day. And this year and muſt be accounted *after* the Felony and Mu Committed. Now if a man be Mortally Wo ded, on the firſt day of *May*, and thereof L guiſhes to the firſt day of *June*, and then dies; Queſtion here ariſes whether the year and the allowed for bringing the Appeal is to be reckon from the giving the Wound, or the time of De Some have held the former: For that the Death ſuing, hath Relation to it, and that is the Cauſe the Death, and the Offender did nothing the da the Death. But the truth is, the year and day be accounted only from the firſt of *June*, the of the Death; for before that time no Fe was Committed: and thus it hath often been re ved and Adjudged, and the Reaſon aboveſaid gro ded upon Relation (which is a Fiction in L holdeth not in this Caſe. *Coke* 2. *Inſtit.* fol. 3

6. If an Appeal of Murder be brought, and depending the Suit, and after the year and day is elapsed, one become accessary to the Murder, the Plaintiff shall have an Appeal against him after the year and day past after the death, but it must be brought within the year and day after this new Felony as accessary.

7. If a man be Indicted for Murder and Convicted only of Man-slaughter, and have the Benefit of the Clergy it seems the Wife and Heir cannot afterwards bring their Appeal. Touching which the Lord Cook 3 Instit. Fo. 131. Cites a Case in these words: Thomas Burghe, *Brother and Heir of* Henry Burghe *brought an* Appeal of Murder *against* Thomas Holcroft, *of the death of the said* Henry: *The Defendant pleaded, that before the Coroner, he was Indicted of Man-slaughter, and before Commissioners of Oyer and Terminer, he was upon that* Indictment Arraigned, *and Confessed the Indictment, and prayed* his Clergy, *and thereupon was Entred* Curia advisare vult, *the Court will consider; whereupon he demanded Judgment, whether the Plantiff ought to maintain that Appeal he had brought. To which the Plantiff demurred in Law. And in this Case three points were adjudged by Sir* Christopher Wray, *Sir* Thomas Gawdy *and the whole Court.*

First, that the matter of the Bar *had been a good Bar of the Appeal by the Common Law, as well as* if the Clergy had been Allowed: *For that the Defendant, upon his Confession of the Indictment had prayed his Clergy, which the Court ought to have granted, and the deferring of the Court to be advised, ought not to prejudice the Party Defendant, albeit the Appeal was Commenced before the Allowance of it.*

The second point *adjudged was, that this Case was out of the Statute of* 3. Hen. 7. *For that the words of that Act are,*

If it fortune that the ſame Felons and Murde and Acceſſaries ſo Arraigned, or any of them, Acquitted, or the Principal of the ſaid Felony, or of them to be Attainted, the Wife or next He him ſo ſlain, *&c.* may have their Appeal of ſame death and Murder againſt the perſon ſo quitted, or againſt the ſaid Principals ſo Attain if they be alive, and that THE BENEFIT OF CLERGY THEREOF before be not had.

And in this the Defendant Holcroft, *was neit* Acquitted *nor* Attainted, *but Convicted by Confe on, and the* Benefit of the Clergy only prayed, *a aforeſaid, ſo as the Statute being penal concern the Life of Man, and made in Reſtraint of Common Law, was not to be taken by Equity, but* Caſus Omiſſus, *a Caſe Omitted, and left to the Co mon Law.*

As to the third, it was objected, that every P ought to have an apt Concluſion, and that the C cluſion in this Caſe ought to have been, Et petit ju cium ſi prædiit *Thomas Holcroft* Iterum de eadem m te, de qua ſemel Convictus fuit, Reſpondere compe debeat. *And he does ask judgment if the above m tioned* Thomas Holcroft *ſhall be obliged to anſwer gain for the* ſame death, *he was once Convicted of But it was adjudged that either of both Concluſ was* ſufficient *in Law: And therefore that excep on was diſallowed by the Rule of the Court.*

Note, the antient Law was, that when a man h judgment to be hanged in an Appeal of Death, t *the Wife, and all the Blood of the Party ſlain ſho draw the Defendant to Execution,* and *Gaſcoy* ſaid, *Iſſint fuit in diebus noſtris,* ſo it was done in o days.

And thus much occaſionally about *Appeals,* wh we the rather inſerted becauſe the practice ther (through I know not whoſe negligence) has be almoſt *loſt* or *forgot*; till ſome few years ago a

in *Southwark* revived it againſt one that killed Husband and got a pardon for it, but ſhe Proſe-ed him on Appeal, had judgment againſt him and was Executed, ſince which time the ſame Courſe been frequently talkt of, and brought, but for the ſt part (to the ſhame I think of thoſe Women or ildren who make *ſuch Compoſitions* for their Hus-nds or Fathers Blood) they have been by ſome *et Bargains* or Compenſations *huſht* up, and ſel-n effectually followed.

Two other Statutes of King *Edw.* 3.

Anno 4. Edw. 3. *cap.* 14.

A Parliament ſhall be holden once every year.

Tem, **It is accorded that a Par-liament ſhall be holden** every r once, **and more often if need be.**

Anno 36. Edw. 3. *cap.* 10.

A Parliament ſhall be holden once in the year.

Tem, **for maintenance of the ſaid Articles and Statutes, and Re-ſs of Divers** MISCHIEFS **and** IEVANCES, **which daily hap-n, A Parliament ſhall be holden ry year, as another time was ined by Statute.**

The Comment.

Fore the *Conqueſt* (as the victory of Duke *William* of *Normandy* over *Harold* the Uſur-commonly, though very improperly called)

Parliaments were to be held twice every year, a
pears by the Laws of King *Edgar* cap. 3. And
Teſtimony of the *Mirrour of Juſtices* cap. 1.
3. For the Eſtates of the Realm, King *Alfred* c
the *Committees* (ſome *Engliſh* Tranſlations o
antient Book Read, *Earls*, but the word ſeem
ther to ſignify *Commiſſioners*, *Truſtees*, or *Repre*
tives) to meet, and ordained for a PERPETU
USAGE that *twice in the year, or oftner, if*
were, in time of Peace they ſhould Aſſemble at
don, to ſpeak their minds for the guiding of
people of God, how they ſhould keep themſelves
Offences, live in quiet and have right done
by certain Uſages and ſound Judgments. King
ward the firſt (ſays *Cook*, 4. *inſtit. fol.* 97) k
Parliament once every two years for the moſt
And now in this King *Edward* the Thirds time
of the *wiſeſt and moſt glorious* of all our K
It was thought fit to Enact by theſe two ſevera
tutes, That a Parliament ſhould be held once
every year, which two Statutes are to this day
Force. For they are *not Repealed*, but rather Co
ed by the Statute made in the 16*th* of our p
Soveraign, King *Charles* the Second, Cap. 1. I
led, *An Act for the Aſſembling and holding of*
liaments once in three years at the leaſt; The
of which are as follow.

"*Becauſe by the antient Laws and Statutes o*
Realm, made in the Reign of King Edwar
third, Parliaments are to be held very often
Majeſties Humble and Loyal Subjects, the
Spiritual and Temporal, and the Commons in
preſent Parliament Aſſembled, moſt Humbly
beſeech your moſt Excellent Majeſty, that it m
declared and Enacted, (2) And be it declare
Enacted by the Authority aforeſaid, that he
the ſitting and holding of Parliaments ſhall
intermitted or diſcontinued above Three ye
the

most; but that within three years from and after the Determination of this present Parliament and from time to time within three years after the Determination of any other Parliament or Parliaments, or if there be occasion, more or oftner, Your Majesty, your Heirs and Successors, do Issue out your Writs for calling Assembling and holding of another Parliament, to the end there may be a frequent calling, Assembling and holding of Parliaments once in three years at the least.

Agreable to these good and wholsome Laws are those gracious Expressions and Promises in His Majesties Proclamation touching the Causes and Reasons for Dissolving the two last Parliaments, Dated April 1681. *Irregularities in Parliament shall* NEVER *make us out of love with Parliaments, which we look upon as the best Method for healing the distempers of the Kingdom, and the only means to preserve the Monarchy in that due Credit and Respect which it ought to have both at home and abroad. And for this Cause we are resolved by the blessing of God to have frequent Parliaments; And both in and out Parliament to use* OUR UTMOST ENDEAVOURS TO EXTERPATE POPERY, *and to redress all the Grievances of our good Subjects, and do all things to Govern according to the Laws of the Kingdom.*

A DIGRESSION touching the Antiquity use and Power of PARLIAMENTS and the Qualifications of such Gentlemen as are fit to be chosen the Peoples Representatives.

THe Recital of these several Laws for frequent calling of Parliaments declaring the same to be of such Importance or Necessity to the safety and well-being

ing of the Nation, invites us to give the vulgar R
der ſome further Information touching thoſe
Honourable Aſſembl ies, which though a Digreſſion
I hope be no Tranſgreſſion, for I am willing
time to go a little out of my way, provided I
thereby meet with the Readers profit and Advan

Of the names and Antiquity of Parliam

THe word PARLIAMENT is *French*, de
from the three words *Parler la ment* to ſp
cnes mind becauſe every Member of that Court ſh
ſincerely and diſcreetly ſpeak his mind for the ge
good of the Common-Wealth, and this name (ſaith
1. *Inſtit Fo.* 110.) was uſed before *William* the C
querer, even in the time of *Edward* the Confeſſor.
moſt commonly in the Saxons time, it was called
chegemote or *Witenage Mote*, that is, the *Great M*
[*Meeting* or *Aſſembly*, whence our *Ward-Moote*
London receive their name to this day]
or the *Wiſe-Mote*, that is, the Aſſembly of the
men and Sages of the Land.

But this word Parliament is uſed in a double ſe

1. *Strictly*, as it includes the *Legiſlative* Po
of *England*, as when we ſay—*An Act of Parlia*
and in this Acceptation, it neceſſarily includes
King, the Lords, and the Commons, each of w
have a *Negative Voice* in making Laws, and w
out their *joint Conſent* no new Laws can paſs,
be obligatory to the Subject.

2. Vulgarly, the word is uſed for the *Two H*
The Lords and Commons, as when we ſay, the K
will *call a Parliament*, His Majeſty has *Diſſolve*
Parliament, &c.

The Lords of Parliament are divided into
ſorts, *viz. Spiritual*, that is to ſay the Biſhops
ſit there in reſpect of their *Baronies*) parcel of
Biſhopri

ishopricks which they hold in their Politick Capacity, and *Temporal.*

The Commons are likewise divided into three *Classes* or parts, *viz. Knights or Representatives of the Shires* or Counties; where note that though the Writ require two *Knights* to be chosen, and that they are called *Knights*, yet there is no necessity that they should actually have the degree of Knighthood, provided they be but Gentlemen; for the Statute 23 *Hen.* 6. cap. 15. Hath these words, *That the Knights of the Shires for the Parliament hereafter to be chosen shall be notable Knights of the same Counties for which they shall be chosen*, OR OTHERWISE *such Notable Esquires or Gentlemen born of the same Counties, as shall be able to be Knights, and no man to be such Knight which standeth in the degree of a Yeoman and under.*

Secondly *Citizens* chosen to Represent Cities.

Thirdly Burgesses, that is to say, those that are chosen out of Boroughs.

Note that the difference between *a City*, and a *Borough* (is this, A City is a Borough Incorporate which is or has within time of memory been an *Episcopal See*, or had a Bishop; And this altho the Bishoprick be Dissolved, as *Westminster* having heretofore a Bishop though none now) still remains a City. *Cook* 1. *Instit. sect.* 164. Boroughs are Towns incorporated, but such as never had any Bishops.

Of the *three Estates in* Parliament.

THere has been a great debate about *the three Estates*, some zealously pleading that The *Bishops* are one of the three Estates of the Realm, and the Lords Temporal a Second, and the Commons-house the third, and the King over all as a Transcendent by himself. Others as stiffly deny this, and assign

the King (as he is the Head of the Common Wealth) to be the *first Estate*, *the Lords*, as well Spiritual & Temporal jointly, to be the *Second*; and the *Commons House* the third.

Non opis est nostræ tantas Componere Lites.

We shall not presume to undertake a decision of this arduous Controversy, but in our poor opinion the matter seems to appear more difficult than really it is, by means that the contending Parties do not first plainly set down what it is, they severally mean by the word *Estate*. Which may be taken, 1. For a *Rank*, *degree*, or Condition of persons considered by themselves different in some notable Respects from others wherewith they may be compared. And in this respect *my Lords the Bishops* may very properly be said to be an *Estate*, or one of the Estates of the Realm, for then there will be several *Estates*, above the number of *three*, for so in the House of Commons there may be said to be three Estates, viz. *Knights*, *Citizens*, and *Burgesses*. And heretofore in the days of Popery, when there were 26. Abbots and Priors, that held *per Baroniam* too, as well as the Bishops, called to the Parliament, and sat in the Lords House, [see *Fullers* Church History, Lib. 6 292. Whether they being *Religious* and Monastical persons whereas the Bishops were *seculars* (no small difference in their account) might not as well claim to be a *distinct Estate* by themselves, as now the Bishops, do, may be a question.

But secondly when we spake of three Estates in the Constitution of our *English* Government, 'tis most natural to mean and intend *such a poize in the Ballance*, or such an *Order* or *State*, as hath a *Negative Voice* in the *Legislative* Power; For as the *King* and *Commons* excluding the *Lords*, so neither the King and Lords excluding the Commons; much less the Lords and Commons excluding the *King*, can make any Law; but this glorious *Triplicity* must

mutual Conjunction, and then from their united Influences ſpring our happy Laws. But in this ſenſe the Lords Spiritual by themſelves have no pretence to be a *diſtinct Eſtate*. That is, they have by themſelves no *Negative Voice*, (which I conceive the proper Characteriſtick or *eſſential Mark* of each of the three *Eſtates*.) For ſuppoſe a *Bill* paſs the Commons, and being brought into the Lords Houſe, all the 26 Biſhops ſhould be againſt it, and ſome of the *Temporal Lords*, yet if the other Temporal Lords be more in number than the Biſhops, and thoſe that ſide with them, the Bill ſhall paſs as the Act of the *whole houſe*; and if his Majeſty pleaſe to give it his *Royal Aſſent*, is undoubted Law. Which demonſtrates the Biſhops have of themſelves *no Negative* Voice, and conſequently are none of the three Eſtates of the Realm. But if any will have them called *an Eſtate* and mean ſomething elſe by it, if he pleaſe to explain his Notion, 'tis like I ſhall not contend with him. about a fiddle faddle word.

Touching the Power *of the Parliament.*

THe Jurisdiction of this Court (ſayth *Cook*, 1 *Inſtit. Sect.* 164.) is ſo Tranſcendent that it maketh, Inlargeth, Diminiſheth, Abrogateth, Repealeth, and reviveth Laws, Statutes, Acts and Ordinances concerning matters Eccleſiaſtical, Civil, Martial, Marine, Capital, Criminal and Common. And 4 *Inſtit. Fo.* 36. The Power and Jurisdiction of the Parliament for making of Laws, in proceeding by Bill, is ſo tranſcendent and abſolute as it cannot be confined either for *Cauſes or Perſons* within any bounds. Of this Court it is truely ſaid—*Si Antiquitatem ſpectes eſt Venerabiliſſima, ſi Dignitatem, eſt Honoratiſſima, ſi Juriſdictionem eſt capaciſſima*; if you regard it's Original, it is moſt Antient; if it's Dignity, it is moſt Honourable; if it's Jurisdiction it is moſt Capacious.

Sr. *Thomas Smith* a great Statesman and in h
esteem and place under Queen *Elizabeth*, in his T
tise, *de Republica Anglorum L. 2. Ca. 2.* gives t
Character of this supream Court—*In Comitijs P
liamentarijs, posita est omnis Augustæ, absolutæ
potestatis vis, veteres leges jubent esse irritas, no
inducunt; Præsentibus juxta ac futuris mod
constituunt; Jura et possessiones hominum priva
rum commutant, Spurios natalibus restituunt, cult
divinum sanctionibus corroborant; Pondera et m
suras variant; JUS IN REGNO SUCCEDEN
prescribunt*, &c. *The most high and absolute po
of the Realm of England, consisteth in the Parliame
for the Parliament abrogateth old Laws, mak
new, giveth order for things past, and for thi
hereafter to be followed, changeth the rights and
sessions of private men; Legitimateth Bastar
Corroborates Religion with Civil Sanctions, Alt
weights and measures; PRESCRIBES THE RIGH
OF SUCCESSION TO THE CROWN, defines doub
full Rights where there is no Law already made, A
pointeth Subsidies, Taxes and Impositions, give
most Free pardons, restoreth in Blood and Na
&c.*

As for the power of Parliaments over both Statut
and Common Law, take it in the Accurate a
Significant words of a Parliament, *viz.* the Stat
of 25 *Hen.* 8. *Ca.* 21. as follows,—*Whereas this Rea
Recognizing no superiour under God, but the Ki
hath been and is free from Subjection to any mans La
but only to such as have been devised, made, and
dained within this Realm, for the wealth there
or to such other as the people of this Realm have t
ken at their free Liberty by their own consent to
used amongst them, and have bound themselves by
use and Custome to the observance of the same;
to the observance of the Laws of any Forreign Pri
Potentate or Prelate, but as to the accustomed*

Ancie

Antient Laws of this Realm, originally eſtabliſhed as Laws of the ſame by the ſaid Sufferance, Conſents and Cuſtom, and none otherwiſe. It ſtandeth therefore with natural Equity and good reaſon, that all and every ſuch Laws Humane made within this Realm or induced into this Realm, by the ſaid Sufferance Conſents and Cuſtom, the King and the Lords ſpiritual and Temporal and Commons Repreſenting the whole State *of the Realm, in the moſt High Court of Parliament, have full Power and Authority to diſpence with thoſe and all other Humone Laws of the Realm, and with every one of them, as the quality of the perſons and matter ſhall require. And alſo the the ſaid Laws and every of them to abrogate, annull, amplify or diminiſh, as to the King, Nobles, and Commons of the Realm, preſent in Parliament ſhall ſeem moſt meet and convenient for the Wealth of the Realm.*

Thus far that notable *Statute*, which in truth is only *Declarative* and in Affirmance of the Antient Common Law of *Eugland*.

The particular buſineſs of Parliament.

BY what hath been ſaid, you may perceive the *work* of an *Engliſh* Parliament is not (as ſome would have it,) only to be *Keys* to unlock the peoples *Purſes*. That is but one part, and perhaps one of the *leaſt* parts too, of their Office. They are to propoſe *New Laws* that are wanting for general good, and to preſs the *Abrogation* of Laws in being, when the Execution of them is found *prejudicial* or *dangerous* to the publick. They are to provide for Religion, and the Safety and Honour of the Nation, they have a power (as you have heard from Sir *Thomas Smith*,) to order the Right *to the Crown* (underſtand all this with the Kings conſent) and they have

have very frequently undertaken and actually *Committed* the ſame, contrary to and different from the *Common Line of Succeſſion.* Nay by the Statute of the 13. *Eliz. cap.* 13. It is expreſly Enacted, *That if any perſon ſhall in any wiſe hold and affirm or maintain, that the Queen with and by the Parliament of* England *is not able to make Laws and Statutes of ſufficient Force and validity to Limit and bind the Crown of this Realm, and the Deſcent, Limitation Inheritance and Government thereof, or that this preſent Statute, or any part thereof, or any* other Statute to be made *by the Authority of the Parliament of* England, *with the Royal Aſſent for Limiting the Crown, is not, are not, or ſhall not, or ought not to be for ever of good and ſufficient Force and validity to bind, limit, reſtrain and Govern all perſons, their Rights and Titles, that in any wiſe may or might claim any Intereſt or poſſibility in or to the Crown of* England, *in poſſeſſion Remainder, Inheritance, Succeſſion or otherwiſe howſoever, and all other perſons whatſoever, every perſon ſo holding affirming or maintaining during the Life of the Queen ſhall be adjudged an high Traitor, and ſuffer and forfeit as in Caſes of High Treaſon is accuſtomed, and every perſon ſo holding affirming or maintaining after the deceaſe of our ſaid Sovereign Lady ſhall forfeit all his Goods and Chattels.*

Which Clauſe and laſt mentioned Penalty is to this day in force, and ought to be conſidered by any who ſhall now pretend that an Act of Parliament cannot diſpoſe of the Succeſſion.

As for the Right of making *War* and *Peace* the ſame is granted to be part of the high *Prerogatives* of our Kings, yet the wiſeſt of our Monarchs have very rarely entered into any War without the conſent of Parliaments; for 1. Who could give them

better

better Counſel in ſuch a difficult Affair? 2. The People would more readily expoſe their perſons in ſuch a *War* the *Juſtice* and *Expediency* whereof was approved by their *Repreſentatives*, 3. The King from thence might more certainly promiſe himſelf *ſupplies* of money to carry on the ſame.

But nothing is more properly the work of a Parliament than to redreſs *Grievances*. To take notice of Monopolies and oppreſſions, to Curb the Exorbitances of pernitious *Favourites*, and *ill Miniſters of State*. To puniſh ſuch *mighty Delinquents* as look upon themſelves too big for the ordinary reach of Juſtice, to inſpect the Conduct of ſuch as are intruſted with Adminiſtration of the Laws, or diſpoſal of the publick *Treaſure* of the Nation; All Crimes of theſe and the like kinds are *publick Nuſances*, common miſchiefs, and wound the *whole Body* politick in a vital part, and can ſcarce at all be found out or Redreſſed (by reaſon of the power and Influence of the Offenders) but in this *great and awful Senate*, before whom the haughtieſt Criminals tremble; and it has been obſerved that they ſcarce ever Proſecuted any (though never ſo great, or highly in favour at Court) but ſooner or later they hit him, and it proved his Ruine. Take a few examples. King *Edw.* the ſecond dotes upon pierce *Gaveſton* (a *French* Gentleman) he waſtes the Kings Treaſures: has undeſerv'd *Honours* conferred on him, affronts the antient Nobility. The Parliament in the beginning of the Kings Reign Complains of him, he is baniſht into *Ireland*. The King afterwards calls him home, and marries him to the Earl of *Gloceſters* Siſter, the Lords complain again ſo effectually, that the King not only conſents to his *ſecond Baniſhment* but that if ever he returned or were found in the Kingdom, he ſhould be held and proceeded againſt as an Enemy

my to the State. Yet back he comes, and is rece-
ed once more by the King as *an Angel*, who car-
him with him into the North, and hearing the Lo-
were in Arms to bring the ſaid *Gaveſton* to Juſtic-
plants him for ſafety in *Scarborough* Caſtle, whi-
being taken, his Head was *Chopt off*.

In King *Richard* the Seconds time, moſt of th-
Judges of *England* to gratify certain *Corrupt* a-
pernicious Favourites about the King being ſent f-
to *Nottingham*, were by perſwaſions and Menace-
prevailed with to give falſe and *Illegal* Reſolutio-
to certain queſtions propoſed to them, declaring ce-
tain matters to be Treaſon which in truth were n-
ſo; For which in the next Parliament they we-
called to Account, and Attainted; and Sir *Robe-*
Treſilian Lord Chief Juſtice of *England*, was *dra-*
from the *Tower* through *London* to *Tyburn*, a-
there Hanged; As likewiſe was *Blake* one of th-
Kings Councii, and *Uske* the Under-Sheriff of *Mi-*
dleſex, who was to pack a Jury to ſerve the pr-
ſent *Turn*, againſt certain *Innocent Lords* and o-
thers, whom they intended to have had taken off
and five more of the Judges were *Baniſht*, an-
their Lands and Goods forfeited. And the Archbi-
ſhop of *York*, the Duke of *Ireland* and the Ea-
of *Suffolk*, three of the Kings *Evil Councellors*, we-
forced to fly, and died miſerable Fugitives i-
Forreign Parts.

In the beginning of King *H.* the 8ths Reign, S-
Richard Empſon Knight, *Edmund Dudley* one of th-
Barons of the Exchequer, having by colour of a-
Act of Parliament to try people for ſeveral Offence-
without Juries, committed great oppreſſions, we-
proceeded againſt in Parliament and loſt their Hea-

In the 19 year of the Reign of King *James* a-
Parliament holden at *Weſtminſter* there were ſhe-
(ſaith *Bakers Chron. Fo.* 418.) *two great Exam-*
of Juſtice; which for future Terrour, are not a-

o ſe here related; one upon Sir *Giles Montpeſſon*, a Gentlemen otherwiſe of Good parts; but for practiſing ſundry *abuſes* in erecting and ſetting up *new Inns* and *Alehouſes* and *exacting great Summs of Money* of people, by pretence of Letters *Pattents* granted to him for that purpoſe, was ſentenced to be *degraded*, from his *Knighthood*, and diſabled to Bear any Office in the Common-Wealth, though he avoided the Execution by Flying the Land; But upon Sir *Francis Mitchel*, a Juſtice of Peace of *Middleſex*, and one of the Chief Agents, the ſentence of *Degradation* was Executed, and he made to ride *with his face to the horſe tail*, through the City of *London*. The other Example was of Sir *Francis Bacon*, *Viſcount* St. *Albans*, Lord Chancellour of *England*, who for *Bribery* was put from his place, and Committed to the Tower.

In King *Charles* the firſt's time, moſt of the Judges that had given their opinions contrary to Law in the Caſe of *Ship-Money*. were call'd to Account, and forced to *Fly* for the ſame: and in the 19th year of our preſent Sovereign, the Earl of *Clarendon*, Lord Chancellour of *England*, being queſtioned in Parliament and retiring thereupon beyond the Seas, was by a ſpecial Act *Baniſhed and Diſabled*. In a word it was well and wiſely ſaid of that excellent Stateſman Sir *William Cecil* Lord Burleigh, and High Treaſurer of *England*, *that he knew not what an Act of Parliament might not doe*; which Apothegm was approved by King *James*, and alleadged (as I remember) in one of his publiſhed Speeches.

And as the *Jurisdiction* of this Court is ſo tranſcendent ſo the Rules and *Methods* of procedings there, are different from thoſe of other Courts. For (ſaith *Cook*, 4 *Inſtit. Fo.* 15.) *As every Court of Juſtice hath Laws and Cuſtomes for it's Direction, ſome by the Common Law, ſome by the Civil and Canon Law, ſome by Peculiar Laws and Cuſtomes &c. So the High*

Court

Court of Parliament suis propijs Legibus et Consue-
dinibus Subsistit, Subsists by it's own Peculiar La
and Customes. *It is*, Lex & Consuetudo Parliamen
the Law and Custom of Parliament, *that all weig
matters in any Parliament moved concerning the Peer
or Commons in Parliament assembled, ought to
determined, adjudged and discused by the* Course
the Parliament, *and not by the Civil Law, nor
by the* Common Laws *of this Realm used in more
ferioun Courts. Which was so declared to be* Secundu
Legem et Consuetudinem Parliamenti, according
the Law and Custom of Parliament, *concerning th
Peers of the Realm, by the King, and all the Lo
Spiritual and Temporal, and the like* pari ratio
(for the same reason) is for the Commons, *for
thing moved or done in the house of Commons: and
rather, for that by another Law and Custom of Pa
liament*, the King cannot take notice of any thi
said or done in the house of Commons, but by th
Report of the house of Commons ; *and every membe
of the Parliament hath a* Judicial place, *and can
no Witness. And this is the Reason that* Judges ough
not *to give any opinion of a matter of Parliament
because it is not to be decided by the Common Law
but* Secundum Legem et Consuetudinem Parliamenti,
according to the Law and Custom of Parliament
*and so the Judges in diverse Parliaments have con
fessed. And some hold, that every offence Committed
in any Court punishable by that Court, must be punish
ed (proceeding Criminally) in the same Court, or i
some higher, and not any Inferiour Court, and th
Court of Parliament hath no higher* —Thus *Cook.*

Great Complaints have been made about a *late Hou*
of Commons sending for some persons into *Cust
dy* by their Serjeant at Arms; but certainly they did
more therein, then what their *Predecessors* have oft
done; every Court must be supposed Armed with
power to defend it self from *Affronts and Insolencies*

Ages when the houſe has appointed particular Committees hath it not been uſual to order that they ſhall be impowr'd to *ſend for Papers, Perſons, and Records?* But to bring men to a *ſober* Conſideration of their Duty and *Danger*, I ſhall give a few Inſtances, beſides thoſe before mention'd, of what the Houſe of Commons hath done in former Ages.

1. Anno 20 *Jacobi*, Doctor *Harris* Miniſter of *Lechingly* in *Surrey*, for misbehaving himſelf by *Preaching* and otherwiſe, about Election of Members of Parliament, upon complaint, was called to the Bar of the houſe of Commons, and there as a Delinquent *on his Knees*, had Judgment to confeſs his fault *there*, and in the *Countrey*, in the *Pulpit* of his Pariſh Church, on Sunday before Sermon.

2. Anno 21 *Jacobi*, *Ingrey* under Sheriff of *Cambridge-Shire*, for refuſing the *Poll* upon the promiſe of Sir *Thomas Steward* to defend him therein, kneeling at the Bar, received his Judgement to ſtand Committed to the Serjeant at Arms, and to make Submiſſion at the Bar, and Acknowledge his offence there, and to make a *farther Submiſſion* openly at the Quarter Seſſions, and there alſo to acknowledge his fault.

3. Anno 20 *Jacobi*, the Mayor of *Arundel*, for misbehaving himſelf in an Election, by putting the Town to a great deal of Charge, not giving a due and ſeveral warning, but *Packing* a number of Electors, not ſent for by Warrant, and after ordered to pay all the Charge, and the Houſe appointed certain perſons to adjuſt the Charges.

4. And 3. *Car.* 1. Sir *William Wray* and others, Deputy Lieutenants of *Cornwal*, for aſſuming to themſelves a power to *make whom they pleas'd* Knights, and defaming thoſe Gentlemen that then ſtood to be Choſen, ſending up and down the Countrey *Letters* for the Trained Bands to appear at the day of Election, and *Menacing* the Countrey under the

Title

Title of *His Majesties pleasure*; had Judgment gi upon them, to be Committed to the *Tower*. 2, T make Recognition of their Offence at the Bar of t House *upon their knees*, which was done. 3. To m a Recognition and submission *at the Assizes* in Co *wal*, in a Form drawn by a Committee.

5. But most remarkable are the Proceeedings the same Parliament *Anno* 1628. against Doct *Manwaring*, who being there charged with *Preac ing* and Publishing Offensive Sermons, and the sa referred to a *Committee*, they brought in their Re port, which was delivered to the House with th *Speech*, as I find it in Doctor *Fullers Church-Histo* L. 11. Fo. 129.

Mr. *Speaker.*

I am to deliver from the Sub-Committee, a Char against Mr. Manwaring, *a Preacher and Doctor Divinity, but a man* so Criminous, *that he hath tu ned his Titles into Accusations; for the* better *the are, the* worse *is he, that hath dishonoured the Here is a great Charge that lies upon him, it is gre in it self, and great because it hath many great Cha ges in it:* Serpens qui Serpentem Devorat, fit Dr co; *his Charge having digested many Charges in it, is become a* Monster *of Charges. The main a great one is this;* A Plot *and Policy, to alter and su vert the* Frame and Fabrick *of this State and Co monwealth. This is the great one, and it hath others i it, that gains it more Greatness: For to this end, h labours to infuse into the Conscience of His Majesty t persuasion of* a Power not bounding it self with Law, *which King* James *of famous memory, calls in his Spee in Parliament*, 1619, Tyranny, *yea*, Tyranny accom panied with Perjury.

2, *He endeavours to persuade the Consciences of th Subjects, That they are Bound to Obey* Illegal Com mands; *yea, he* Damns *them for not Obeying them.*

3. *He*

3. *He Robs the Subjects of the* Property *of their Goods.*

4. *He* Brands *them that will not loſe this Property, with moſt Scandalous and Odious Titles, to make them* Hateful both to Prince and People, *ſo to ſet a Diviſion between the Head and Members, and between the Members themſelves.*

5. *To the ſame end (not much unlike to* Faux *and his Fellows) he ſeeks to Blow up* Parliaments and Parliamentary-Power. *Theſe five being duly viewed, will appear to be ſo many Charges, and withal they make up the main and great Charge, a miſchievous Plot to alter and ſubvert the Frame and Government of this State and Commonwealth. And now that you may be ſure that Mr.* Manwaring, *though he leave us* no propriety *in our Goods yet he hath an abſolute propriety in his Charge*; Audite ipſam Belluam, *hear Mr.* Manwaring *by his own words making up his own Charge.*

Here he produced the Books, particularly Inſiſting on p. 19. 29. and 30. in the firſt Sermon p. 35. 46. and 48. in the ſecond Sermon. All which paſſages he heightned with much Eloquence and Acrimony; thus concluding his Speech, *I have ſhewed you an Evil tree that bringeth forth Evil fruit; and now it reſts with you to determine, whether the following Sentence ſhall follow,* Cut it down, and caſt it into the Fire.

Four days after the Parliament proceeded to his *Cenſure*, conſiſting of eight particulars, it being ordered by the houſe of Lords againſt him, as followeth.

1. To be *Impriſoned* during the pleaſure of the houſe.

2. To be *Fined* a thouſand Pounds.

3. To make his *Submiſſion* at the Bar in this houſe, and in the houſe of *Commons*, at the Bar there, *in Verbis Conceptis*, a ſet form of words framed by a Commitee of this houſe.

4. To

4. To be *Suspended* from his Ministerial function three years, and in the mean time a sufficient preaching-man to be provided out of the profits of his living, and this to be left to be performed by the Ecclesiastical Court.

5. To be Disabled for ever hereafter *from Preaching at Court.*

6. To be for ever Disabled of having any *Ecclesiastical Dignity* in the Church of *England.*

7. To be Uncapable of any *Secular* Office or Preferment.

8. That his Bookes are worthy to be *Burned,* and his Majesty to be moved, that it may be so in *London,* and both the *Universities.*

And accordingly he made his Humble Submission at both the *Bars* in Parliament, on the three and twentieth of *June* following, and on his Knees before both Houses, submitted himself, with outward Expressions of Sorrow, as followeth.

I do here in all sorrow of heart, and true Repentance, acknowledge those many Errors and Indiscretions which I have committed in Preaching and publishing the two Sermons of mine, which I called Religion and Allegiance, and my great fault in falling upon this Theam again, and handling the same rashly, scandalously, and unadvisedly in my own parish Church in St. Giles in the fields, the fourth of May last past. I humbly acknowledge these three Sermons to have been full of Dangerous passages and Inferences, and scandalous Aspersions, in most part of them. And I do Humbly acknowledge the Just proceedings of this Honourable House against me, and the Just Sentence and Judgement pass'd upon me for my great Offence. And I do from the bottom of my heart crave pardon of God, the King, and this Honourable House, and the Common Weal in general, and those worthy persons Adjudged to be reflected upon by me in particular, for these great Offences and Errors.

The truth is, 'tis this *High Court* of Parliament, that only can hinder the *Subject* from being given up as a prey to the *Arbitrary Pleasure* not only of the Prince if he should attempt it, but (which is ten times worse) to the unreasonable passions and lusts of *Favourites*, Chief Ministers, and Women; when otherwise instead of a *Monarch* (who as sometimes it may happen shall Govern but in name) we might be ruled like the Antient *French* by an Insolent *Major of the Pallace*, who will be sure to mind the private interest of himself and Family more than that of the Prince or the *Publick Good*; Or like the *Turkish* Empire under a *Weak Grand Seignior* by the *Prevailing Concubine* of the *Seraglio*, who is perhaps herself *managed* by no higher dictates than that of her *Chief Eunuch* or *She-Slave*. It is strange therefore to observe the *Impotent Ambition* of some men (and such as, with Shame let us speak it, boast themselves *English-men* too) who (provided they may trample upon and *domineer* over their Inferiors) care not how much their *Superiors* do the like over them. Their Souls (like most insolent mens) being mean enough to submit thereunto; or who can enough deplore and abhor the ignorance and *stupidity* of some *lazy insignificant Gentlemen*, who care not how things go, provided they may enjoy their *Hawks*, *Hounds*, and *Bowling-Green Meetings*; whilst not only for *Divinity*, but *Politicks* too, they are Govern'd by their more *Impertinent Chaplain*, or the Parson of their Parish. Now nothing is more obvious than the designs of some *idle Covetous Sycophant Clergy-men*, *who like* Ivy, though it cannot grow without the support of the Oak and yet will destroy it at last, do in private Parlours over the Glass, whilst Healths go round, as well as in their Pulpits over their Cushions, set up *Absolute Monarchy* to be *jure Divino*, declaiming against the unreasonable stubornes of any Parliament that will not give away the peoples *money*, and submit

mit themſelves to be *Fleec'd*, as often as the *pr* *Miniſter* or Favourite think fit. They cry up *t* Prince like an Angel ſo long as he will be their *E* *ecutioner* to Whip, Impriſon, or hang all that *w* not *truckle* to their own Pride and Avarice; or *re* fuſe to give up their *Souls* once again to be mana by an *Implicite Faith*, whereby in the mean *wh* theſe *Huffiſh Sir Johns* might not be troubled *wi* thoſe uneaſy Tasks of *Studying*, *Preaching*, &c. *B* may have nothing elſe to do, but live at eaſe, *ke* their *Coach* and Horſes, with a *ſilly Curate* to do the *Drudgery*; Whilſt they themſelves are maki *Addreſſes* above, by Flattering and Informing ſome great *Noblemans* or *Biſhops* Table, and *rail* againſt the *Whiggs* and *Fanaticks*, and ſpeaking good word for *Popery by the By*; Or elſe if the parts reach ſo high, by ſome Sycophant Pamphlet Sermon againſt the Government Eſtabliſht by La They teach that men have no Property either in the Lives or Goods, but only during the Princes plea ſure, &c. If there be not ſuch a parcel of Things theſe that call themſelves *Divines*, then *no Body* concerned *in this Character*; *but if there be*, *they* *the worſt of men*, and *ought not only* to be expoſed but ſeverely puniſht.

Therefore ſince at preſent we live under ſo happy Government where being ſecurely Landed our ſelv we behold the Shipwrack of our Neighbours, an ſince (notwithſtanding the goodneſs of our Sovereig King *Charles* the Second (*whom God preſerve*) wh has declared that he deſires nothing leſs then the Al teration or ſubverſion of that Government (which well by his *Coronation* Oath, as by his own Lenity and good nature, he thinks himſelf obliged to obſerve) there are ſome who, for their own private ends, endeavour their utmoſt to remove our antient *Land-mark* Introducing Popery and Slavery amongſt us; It therefore the indiſpenſable *Intereſt* and Duty of

true

English-men to maintain these priviledges conveyed from their Ancestors through so many Generations inviolable, upon which all our (Earthly) and in a great measure our *Spiritual)* Happiness, safety, and well-being depends. Nor can any man in his senses but acknowledge that the only *right way* to attain that end, is to look well to the *Means*, and that is by taking due care what persons they Choose for their Representatives, with whom they must trust their Estates, Lives, and Liberties.

Now this Government of a Prince by and with Parliaments, whenever the Condition and Necessities of the State require them, however according to it's primitive Institution it was the best of all others, yet as well in that as in Christianity it self, there have been found out ways of Corruption, and that is, when either they sit *too long*, or *too seldom*, or are *too frequently* dissolved; too *frequent Dissolutions* being no less *Dangerous* to the Subject, then too long Sessions. Nevertheless it may be in the Electors power to avoid the inconveniencies of both, and that is by making a *good Choice.*

Wheras if the Country people will sell all that they have for a little rosst Beef, a Glass of Sack, and a pot of Ale, Choosing him that will give them most drink a day, though they know him to be a person who will sell both their Religion, Liberties and Fortunes, to morrow, then frequent Dissolutions will of necessity ruine us, and utterly debauch this Excellent Constitution; for the honest Country Gentleman designing no other private advantage but the true service of his King and Country, hath no reason, nor is he able, once in half a year to spend 4. or 500. pound, only to purchase a place full of Labour, Charge, trouble and Danger, without any profit to himself, only to serve those who put him to such an unkind Expence. And when honest Loyal Gentlemen are thus discouraged, this *Sottish* humour amongst the Electors continue,

the

the Papist, and their Faction, or necessitous p
of prostituted Consciences, will carry their vote
they can afford to *buy them* at large rates, bein
solved to repay themselves, though with the ru
the Nation.

This is no vain surmize or idle speculation, but
very truth of the Case; and the meanest Cou
man that has Eyes in his head, and will use them,
not but see it: for did you ever know a *Coach*
or Groom buy his place, unless he designed to ro
Masters Bin? Therefore whoever you put to ch
in your Elections, blame him not, if he makes m
again of what he bought, and lays out his vote in
house, not for your Good and that of the publick,
that way as will best please the Ministers of Stat
so he himself may get a good place, or Preferme
Title of Honour by the Bargain. I say though
himself be a base wretch for so doing, Yet *You* ca
blame him, since you did not lend him your Trust,
sold it him, and what a man hath purchased with
own money, he may lawfully sell again.

Therefore that man who does wilfully giv
voice for a *Knave* or *Fool*, does his endeavour to r
both his Country, and himself and his posterity, an
be as bad or worse then the person he chooses; a
the greater part of the house happen to be *Wis*
Honester, it is no thanks to him; he did as much a
could to debauch it; and therefore for his part, if
else were concerned with him, it were no matte
he were forthwith made a *Slave*, and his Chil
Perpetual Vassals.

The before mentioned Old Lord Treasurer *Burl*
(who is thought to have been the greatest State
that ever this Nation bred) did frequently deliver
Maxime, or rather as a Prophecy, *that England*
hardly be ruined, unless it be by her own Parliam
undoubtedly foreseeing that other oppressions, as b
wrought by violence, might perhaps by violence
in

time ſhaken off again; whereas when in a Parliamentary way we are undone by a Law, that can never be reverſt but by a down-right Rebellion, becauſe the parties advantag'd by that Law will never agree to the repealing of it; and a Rebellion is both dangerous, and of ſo black a Character, as men either rich or conſcientious, will not engage therein; and therefore no publick miſchief is ſo irrecoverable as that which is grown into a Law, and nothing, you know, can become ſo, but what is Impoſed upon you by Parliament. Such is the happy frame of your Government, ſo prudently and ſo ſtrong have your Anceſtors ſecured Property and Liberty, (reſcued by inch-meal out of the hands of encroaching violence) that you cannot be enſlaved but with chains of your own making, for as you are never undone till you are undone by Law, ſo you can never be undone by a Law, till you chuſe the undoing Legiſlators; and may not your enemies add *Scorn* to their *Cruelty*, and pretend Juſtice for both, when they can plead they had never trampled on your heads, had not you laid them on the Ground?

From what has been ſaid, it evidently appears of what vaſt importance it is at all times, when ever his Majeſty ſhall be pleaſ'd to iſſue out his writs for a Parliament, to chuſe (as much as in us lies) a good Houſe of Commons, as we tender our Religion, Liberties, Eſtates and Poſterity; upon our well or ill chuſing, depends our well or ill-being; 'tis here as in marriage or war, there is no room for ſecond Errors, one Act may ruine a Nation beyond retrieve.

Beſides, they whom you chuſe will repreſent the qualities as well as the perſons, and if you ſend up a falſe glaſs, it will repreſent you with an ugly face; you have hitherto had the repute of an antient and grave people, but if you chuſe raw Saplings, green heads, unexperienced children, the world will Judge of you, as they once did of the *Grecians*, that you were either

always children, or are grown twice so; you ha long been a famous Religious Protestant Nation, if you chuse debauched swearing Atheists, men no Religion, or such as are meer formalists, or c clinable to Popery, what can the world think but th the Nation has lost its sense of Religion, and is co tent to be led back into the *Egyptian* darkne *Romish Fopperies*: you have formerly had the Ch racter of a sober temperate Nation, but if you ch Drunkards for your Trustees, or give your voic for those that gorge you most with liquor, wh can be supposed but that you are already *Dru* with folly, and Just *Reeling* into Slavery.

Some Directions concerning the Choice Members to serve in Parliament, and Qualifications that render a Gentlem fit *or* unfit, *worthy or undeserving your Voices for so great a Trust.*

1. AVoid *all such as hold any Office of Consi rable value during pleasure*, they being su ject to be Over-awed. For altho a man wish w to his Countrey, and in the Betraying thereof, kn that at the long run he mischiefs and enslaves Posterity, if not himself, yet the narrowness of m minds is such, as makes them more tenderly ap hend a small *present* damage, than a far gre hereafter. Such men must of necessity be unde great Temptation and Distraction, when their C sciences and Interest look different ways. For to truth, such an *Office* is but a softer word for a *Pe* Therefore since these men know before hand Inconveniences that attend the Trust of a Me of Parliament faithfully discharged, 'tis very suspi and reflecting upon their honesty, if any such

And I think we are bound in Charity, nor we do them a greater Curtesy, than to Answer Petition in the Lords Prayer--*Not to lead them Temptation.*

Suspect *all those* (especially if they are men of Repute) *who in their Profession, or near Relati- have dependency upon the Court.* For though to the Kings Servant is no Bar from being a Parli- ent-man, or from serving his Country honest- in that Station, and no doubt several of them have divers times well discharged the same, yet fre- ently such persons (unworthily) guessing at their nce by themselves, are apt to Vote right or ong, as they imagine will most please the Pre- gative Party, and tis an hard matter for a Courti- to please that great (perhaps corrupt) Minister who ents him, and those whom he Represents, at the time: And if he endeavours to oblige both, becomes such an uncertain Weathercock, as most monly he pleases neither. And therefore the t prudent and honestest of the Courtiers are al- observed to decline being Parliament men, for very reason.

Meddle not with *such as have been or are ow Pensioners*, or receive Salaries for *secret ices*. I know they would now *Brazen it out*, t there were no such men, no such practices. the contrary is notorious; did not the House of mons last *Westminster*-Parliament take the into Examination? nay did not Sir *S.* F. *by memory* (without *the books*, which for some rea- were refused to be brought in) name about 30 them, and the respective *Sums* yearly paid to and would not *many more* have been discove- and the whole knot of them severely and ex- arily punisht, if that Parliament had a little lon- Continued? Now there is none more implacat your Enemy, than that person whose Interest i-

is to destroy you; that must neither eat nor drink except you starve; that must go in Rags, except you go naked; are taught to Fleece you, that they may keep themselves warm. To prevent this, avoid not only all former Pensioners, but such other as may be in danger to become so; Therefore meddle not with men of necessitous Fortunes, or much Debt. The Representative of a Nation ought to consist of the most wise, Wealthy, sober, and conscientious of the people, not men of mean Spirits and little figure, and sordid passions, that would sell the Interest of the People that chose them to advance their own, or be at the beck of some great man, in hope of a lift to a good Imploy. Those that have *fair Estates*, have in a manner given *Hostages* to the Country, and must be *Errant Fools* before they can play the *Knave* with you. But what can the *needy Passenger* if the *Ship* perish, if he can but save himself in the *long Boat*, or get some Booty by the *Wreck*? What Protection do you expect from them, who cannot shew their Faces with confidence without a Protection, either in or out of Parliament? Who are no less apprehensive of a *Bayliff*, than of the growing greatness of the *French*; and dread not *Popery* half so much as an *Out-Lawry*? Will you secure them within the VValls of the house of Commons, who were better secured within the VValls of a Common Goal? VVho can never pay their Debts Contracted by their Prodigality, but out of your Purses; and must run you in, to get themselves out of their Mortgages? These mens fear of being *Dissolved* makes them submit to any thing, rather than be left to the unmerciful Rage of their hungry Creditors, who have so long fasted for their money. For all such persons (though some of them may be look't upon as honest, fair-Conditioned Gentlemen and good House-keepers,) are in danger of being Tenanted to repair the decays of their own private

tunes, by the Ruine of the Publick. Moreover the Chooſing of ſuch broken Fortunes, decays Trade, and ruins whole Families; inſomuch that I have known it drive many men (contrary to their own Inclinations) to wiſh never to ſee Parliaments more in *England*. In a word, if Beggers ever come to be your Repreſentatives, how can they Judge what is expedient for the Nation to *ſpare*, whoſe only Care is to get a piece of Money to ſpend?

4. As you are not unadviſedly to Chooſe ſuch as retein to the Court at home, ſo much leſs are you to Elect any ſuch as *have their dependance upon Forreign Princes or States*, theſe are under ſtrong obligations to ſee you ruined; for your own Reaſon will tell you, that no Forreign Power will prodigally throw away his Piſtoles, where he expects not an Harveſt anſwerable to his Seed. 'Tis poſſible this Caution may not be unneceſſary, for 'tis more than ſuſpected that there are ſome ſuch degenerated *Engliſhmen*, who having forſaken the Intereſt of their Native Countrey, have ſold themſelves to an *Outlandiſh* Intereſt, that they may the better gratify their own Ambition, and thoſe Potent Luſts which their own meaner Fortuues could not otherwiſe feed and ſatiate.

5. Be not over-fond to *receive Bribes and Gratifications* from perſons that would fain make a prey of you, and by their purſes, laviſh treats, and entertainments would allure you to proſtitute your voices for their Elections; you may be aſſured they would never bid ſo high for your Suffrages, but that they know where to make their Markets. Chuſe the worthy *unwilling* perſon, before the complemental unworthy man; whoſe extraordinary forwardneſs prognoſticates he ſeeks not your good, but his own, ſeperate from the publick. Let us not play the fools or knaves to neglect or betray the Common Intereſt of our Country by a baſe Election, let neither *Fear*,

Flattery, nor *Gain* Biass us. Consider with yo
selves what losers you will be, if to laugh and be
ry one day, the person you choose should give
and your children occasion to mourn for ever
——*Say not, he's but a single person, one man c
do such hurt*,——Silly men! what if all other p
should be as bad as your selves? then all the h
would be of a peice, and besides don't you know
sometimes a *single man* has carried a *Vote*, which p
haps was no less mischeivous than *Irretrievable*
how Justly the gallant antient *Heathens* may upb
this baseness of us Christians, when, as they sacri
many of their children, nay and oftentimes their
Lives for the good of their Country, so on the co
trary do we sacrifice or at least *Happ-Hazard* t
our Religion, Lives, Children and Countrey for
Swinish pleasure of a day or two's debauchery.

6. Make not your *publick choice the Recom*
of private Favours, 'tis not pleasing a Neigh
because rich and powerfull, but saving of *Eng*
that you are to regard. Neither pay nor return
vate obligations at the cost of the Nation. Sir
is a *pritty Gentleman* and treats people *Civilly*,
my *Landlord* is a good man and has been Kind,
Esquire such an one, is our next Justice of peace,
yet I will not give my voice contrary to my co
ence, or have an hand in a choice that may ruine
Country, to gratify any or all of them. Let no
engagements put you upon dangerous Election
you *Love the Liberties* and the Freedom of
Posterity. But tell them in this affair they must
you excused, for that the weight of the matter
well bear it, this is your Inheritance; all may de
upon't; 'tis a more *Modest* request if they w
desire you to *give them that Freehold and E*
that qualifies you for an Elector, than to pre
to be for a man that in your conscience you
unfit or not so fitt as his *Competitor* for so weig

Trust. Men don't use to *Lend their Wives*, or *give their Children* to satisfie personal Kindnesses, nor ought you to make a *Swop* of your Birthright (and that of your Posterities too) for a mess of pottage, a Feast or a lusty *Drinking bout*; there can be no proportion here, and therefore none must take it ill, that you use your freedom about that which in its Constitution is the great *Bulwark* of all your antient Liberties.

7. Have a care of *Ambitious* men and *non-Residents*, such as Live most about the Town, and not on their Estates in the Country. *These seek Honours and Preferments* above; and little or never Better the Country with their expences or Hospitality, for they are too much for themselves, to Act vigorously for the advantage of their Country; or in the house they do for a while *Swagger* a little, and *Speech* it briskly, 'tis only that the Court may take notice of them, and *take them off* by some preferment; and then these *false Patriots* shall be the only stickers for unbounded Prerogative.

8. Be resolved (against all Temptations) to choose *Minors*: What, will you be content with *sucking Statesmen*? and *Beard-less Politicians*? and *Rebellious Counsellors*? then, expect, for well you deserve, to be lasht with *Scorpions*: Can you Judge them fit to dispose of your Liberties, Lives, Estates, and Religion, who cannot legally dispose of their own Estates themselves? What security can they give you, that they will not give away *yours and you*, whose Bond in the eye of the Law will not be taken for 40 s? but by your own experience of what such *young Green Heads* have been and done in former Parliaments, I hope learned you sufficient wisdom, not to chuse the like again.

9. Elect no prodigal or *Voluptious* persons, for besides that such are not regular enough to be *Law-makers*, they are commonly Idle, and though possibly they

may wish well to your Intereſt, yet they will rat
loſe *it* than their *Pleaſures*, they will ſcarce leave o
of their *Nightly Revellings* to give you their atte
ance and Service next day, and therefore they are
to be relyed upon. And upon this occaſion I
borrow the words of *an Author* to whom I do
much deſire to be beholden; *Some Senators are dr
from their duties by Pleaſure; perhaps a party at T
nis*, Bowles, Cards, a pack of Dogs, a Cock-Fi
or a Horſe-match, a Comedy, a Good Fellow, o
Miſtreſs. *And while they are* thus employed,
Vigilant faction ſteals a Vote that is worth a K
dom. —*Some again are ſo tranſported with the
nity of* Dreſs and Language, *that rather then ſe
the publick with* one hair amiſs, *or in* one bro
Period, *they'l let the publick* periſh, Mallent R
publicam turbari, quam capillos. *Theſe, while t
Country lies at* Stake, *are* ordering *of their* heads,
Poliſhing the Phraſe, ſhaping *the* parts *of a S*
Speech, till it is too late to uſe it. *Nothing meth
does leſs beſeem a* Grave Aſſembly, *then this* Faculta
la Loquendi; *this ſame* Rhetorical Twittle-twattle
ſpins out ſo much time in tedious Circumſtance, *t
it makes a man e'en* ſick *of a* good Cauſe, *and
the very* form, *prejudge the* Reaſon *of it.*—S
and Neglect, *are yet more dangerous in a Sena
in regard of* Surprizes *from the* Faction, *theſe t
a* wet day, *or a* cold morning, a ſufficient diſcharg
their Attendance; *and while they are taking* t'o
Napp, *or* t'other Bottle, *the* Monarch *perhaps
loſt his* Crown, *or the* Subject *his* Liberty.

9. Avoid thoſe that *play the Proteſtants in D
ſign, and are indeed diſguiſed Papiſts*, ready to p
off their maſk on the firſt opportunity, when
time ſerves. You may know them by their ſw
gering for a Popiſh Succeſſor to maintain the Pr
itant Religion, Their *Laughing at the Popiſh P
and* diſgracing Evidence of it, and at the ſame
affirm

affirming (without any grounds) the *reality of a Presbyterian Plot*; their associating with known *Papists*, and winking at them, but eager heats to put the Laws in Execution with the utmost rigour upon Protestant Dissenters; These are men whose affection for the Protestant Interest, notwithstanding all their fair Speeches, may justly be *question'd*, since their practice gives their words the *Lye*; nor will their large pretensions and seeming zeal for the Church of *England*, at all prevail with wise men; for we know the Papists themselves, when 'tis for their Interest, will pretend the same thing, and speak fair of our Church, and rail only upon the *Fanaticks*; when yet in their hearts, they hate our *Church* as much as they do any of the *Sects*; Observe all their *Pamphlets*, the noise is against the Presbyterians and Dissenters, but 'tis with a design to destroy them first, and the Church of *England* afterwards; for when so great a body of Protestants are represented as *Disloyal* and *Dangerous*, and Crusht and undone, the Church of *England-men* will be left *alone*, and then they hope to deal with them well enough; and that this is their aim, may be perceiv'd if you observe how zealous the *Papists* are to stirr up Prosecution against the *Dissenters*, and none more joyful when it goes on, *&c.* Now what's all this for? are they think you indeed and in earnest so very *kind* to the Church of *England*? for what acquaintance? No, no, 'tis all Dissimulation and Roguery, a Design which they drive on first to *divide* and then to *ruine*. Therefore beware how you chuse any such *Tools* as they make use of therein. The contrary, are men that bless God for the most happy *discovery* of the Hellish Popish Plot, and all their wicked *shams* ever since, and would have the bottom thereof fairly searcht into, and the *Traitors*, though never so great or potent, brought to Condign punishment, and in their Conversation zealously direct themselves in an Opposition to the *Papal Interest*, which indeed is a combination

againſt *good Senſe*, *Reaſon*, and *Conſcience*, and to Introduce a *blind Obedience* without (if not againſt) Conviction: And that Principle which Introduces *Implicite Faith and blind Obedience in Religion* will alſo Introduce *Implicite Faith and blind Obedience in Government*, ſo that it ſhall be no more the *Law* in the one than in the other, but the will and power of the Superior that ſhall be the *Rule and Bound* of our Subjection; this is that fatal miſchief Popery brings with it to *Civil Society*, and for which all ſuch Societies ought to beware of it, and its friends and Abetters, which ſure none can be, but ſuch who are deſign'd for *Slaves* by nature as well as Fortune, debaucht lew'd unthinking *Animals*, properly enough called *Tories*; *Silly*, *Servile*, yet conceited and Cruel Creatures altogether of an *Iriſh* underſtanding.

10. As for you *Citizens Burgeſſes* and *Freemen* of Cities and Corporations in particular, I ſhall only ſay, That *whoever is not fit to be choſen Knight of the Shire, is likewiſe unfit to be choſen a Burgeſs*; Neither let the more ſpecious pretences of any man that ſhall promiſe to build you a *Town-Hall*, on *Relief of your poor* with mony, or out of his Adjacent *Woods*, or any ſuch *Good-morrows*, deceive you; for if ſo, wherein are you wiſer than your *Horſes*, whom you catch every day, and Clap a Bridle into their mouths, only by ſhewing them a few *Oats*, which they are never like to Eat? Even the very *Mice* are too wiſe to be taken by an *Old Bait*, but will firſt have the trap new baited before they'le meddle: And yet I have known a Corporation which has been taken *TWICE* by the ſame bait. But ſuppoſe theſe men do really perform what they promiſe, what Compenſation is that, if the ſame men ſhould lay a good *Swinging Tax* upon your Eſtates without any real cauſe? or ſhould *give up* the very power you have of Taxing yourſelves, or ſending your Repreſentatives in Parliament, (for one *bad Parliament* may ruine us) what good would

would the money for your *Poor* do in such a case, more than that when you are thereby reduced to beggery, you might perhaps yourselves (the Gentry of the Country having no reason to relieve you) be forc'd to come in for a *small share* of this their Hypocritical Charity? An excellent Reward for *Knavish Folly*: Neither say—Oh! *this is but one man, and can have but one Vote, he will do our Town a great deal of good, and can do us but little hurt if he would*, &c. For, I (as I told you before) one or *two Voices* have sometimes carried a *Vote* of great Importance 5 2. You know not what mischief your *bad example* may do in other Corporations, and *if all* should do so, what a miserable case would you be in? Since the Voices of the Boroughs make two thirds of the House. Lastly, no man can tell the Influence that *one running Talkative Ill-man* may get over the rest of the House, especially over those that weigh words more than Sense, Reason, and the Interest of their Country.

Hitherto we have talked Negatives, and described such as are not fit *to be Chosen; Now we come positively to set before you, who are fit for such a* Trust, *especially in such a dangerous Juncture as we are fallen into. In order to which we must consider for what ends they serve, and they are principally* Two. *The first is, the preservation of our Religion from Popery, the other is to preserve inviolable our Liberty and Property according to the known Laws of the Land, without any giving way unto or Introduction of that Absolute and Arbitrary Rule practiced in Forreign Countreys, which we are neither to imitate or regard—Therefore,*

1. Take Care to Choose such as are well known to be *men of good Consciences fearing God*, throughly Principled in the Protestant Religion, and of high Resolution to maintain it with their Lives and Fortunes.

And

And amongſt theſe, rather caſt your Favour upon men of *large Principles* (I mean in matter of mere opinion) ſuch as will not ſacrifice their Neighbour's Property and Civil Rights to the frowardneſs of their own Party in Religion. *Narrow Souls*, that will own none but thoſe that bear their own Impreſs and ſuperſcription, will ſooner raiſe Perſecution *at home* than ſecure us from *Popery* and *Invaſion* from abroad. The *great Intereſt of England at this day, is, to Tolerate the Tolerable, to bear with the weak, to encourage the Conſcientious, and to reſtrain none but ſuch as would reſtrain all beſides themſelves.*

2. As we ought as near as we can poſſibly judge, to Elect *Good Proteſtants towards God, and juſt towards men*, yet ſince in this Corrupt Age wherein we Live men are not ſo *ſpiritual* as they ought to be, it is not amiſs to ſeek for thoſe whoſe ſpiritual Intereſt is ſeconded by a *Temporal* one; For though men talk high, and keep a great Noiſe with Conſcience and love to their Countrey, yet when you underſtand *Mankind* aright (not as it ſhould be, but as it is, and I fear ever will be) then you will find that private Intereſt is the *ſtring* in the *Bears Noſe*, it is that Governs the *Beaſt*. And therefore the ſureſt Champions for our Religion (*Cæteris Paribus*) againſt the Papacy, are our *Abby Landed-men*, for notwithſtanding the Regiſtred *Diſpenſation* to King *Henry* the Eighth from the Pope, for the ſeizing of thoſe Monaſteries and Lands, yet of late they pretend that the Pope had not Power to Alien them from the Church, ſo that the preſent Poſſeſſors can never truſt or rely upon *that*, or any *new* promiſes or Actual Grants thereof, eſpecially from *him* whoſe everlaſting and declared Maxime it is—*Never to keep Faith with Heretics*. Undoubtedly to make eaſy his aſcent into the Saddle he will proffer many *Aſſurances* and Grants, but if theſe Abby-Landed men be not the moſt *filly* of all others, they will never believe him; For when he

is once firmly setled, then will he with his *Canon Law Distinctions*, like Fire under Quicksilver, Evaporate away all his *Promises*, and violently Resume the Lands, glorying of his own *Bounty*, if he require not the mean *profits* ever since they have been sacriligiously with-held from Holy Church.

3. Endeavour to Chuse men of *Wisdom* and *Courage*, who will not be *Hectored* out of their Duties by the Frowns and Scowles of men: Never had you more need to pitch upon the old *English* Spirit, that durst be faithfull and just against all Temptations. What a degenerate Race have we known, that could never yet Resist *Smile* or *Frown*, but tamely sunk below their own Convictions, and knew the Evil, they did, yet durst not but Commit it?

4. Make it your business to Chuse such as are resolved to stand by and maintain the *power and priviledges of Parliament* (for they are the Heart-strings of the Common-Wealth) together with the power and just Rights of the King, according to the Laws of the Kingdom, so as the one may not Entrench upon the other. And such as with a becoming true *English Courage* will Prosecute all Traitors, whether already Impeached, or to be Impeached; And to secure us from Popery hereafter, and to get removed all *Corrupt and* Arbitrary *Ministers of State*, and *wicked Judges*, and *stifflers* of the discovery of the Popish Plot, and *Suborners*, and vile Pamphleteers, that endeavour so industriously to Clear the Papists, and expose the Protestant Religion, and poison the People.

Lastly, Take particular notice of those who are men *of Industry and Improvement*; for such as are Ingenious and laborious to propagate the growth and advantage of their Country, will be very tender of yeilding to any thing that may weaken or Impoverish it.

If you Conduct yourselves thus prudently, honestly and gallantly, in your *Choice*, without putting the Gentlemen

Gentlemen whom you chuse to serve you, to ch
the consequence will be, that as you will be sur
have a *good Parliament* when ever His Majesty
please to call one, and such as will be zealous for
safety of the Protestant Religion, and prosperity
the Nation, if they shall continue to *sit and act*
on the other side, If they should be *Dissolv'd*
never so many new Parliaments be called, yet
run no hazard, for the same *Candidates* will st
ready to serve you. And so we shall conclude our
course of Parliaments, when I shall first have obs
that antiently *all Freemen of England* (though
Free-holders) had a right to chuse their Represent
till the same was altered and limitted by the follo
ing Statute, for the reasons therein mention'd.

The Statute Anno 8. Hen. 6. Cap. 7.

What sort of men shall be *Chusers*, and wh shall be Chosen *Knights* of the Parli ment.

ITem, *whereas the Elections of Knights of Shires come to the Parliaments of our Lord the K in many Counties of the Realm of* England, *have of late been made by very great, Outragious and* cessive numbers *of People, dwelling within the Counties of the Realm of* England, *of the which part was of people of* small Substance, *and of no due, whereof* every one of them *pretended a voice equivalent, as to such Elections to be made, with meest worthy Knights and Esquires, dwelling with the same Counties, whereby Man Slaughter, Batteries, and Divisions among the Gentlemen, other People of the same Counties shall very rise and be, unless convenient and due Remed*

prov

vided in this behalf: (2) our Lord the King con-
dering the premiſes, hath provided, ordained and
ablished by Authority of this preſent Parliament,
at the Knights *of the Shires to be choſen within*
he ſaid Realm of England *to come to the Parliament*
our Lord the King hereafter to be holden, ſhall
e choſen in every County of the Realm of England,
y People dwelling and reſident in the ſame Counties,
hereof every one of them ſhall have Land or Tene-
ent, to the value of forty Shillings by the year, *at the*
all, above all Charges, (3) and that they which
all be ſo choſen ſhall be dwelling and reſident
ithin the ſame Counties: (4) and ſuch as have the
reateſt number of them that may expend forty ſhil-
ngs by the year and above, as afore is ſaid, ſhall be
eturned by the Sheriffs of every County, Knights for
Parliament, by Indentures ſealed betwixt the ſaid
heriffs and the ſaid Chuſers ſo to be made: (5) and
very Sheriff of the Realm of England, *ſhall have*
ower by the ſaid authority to examine upon the
Evangeliſts every ſuch Chuſer, how much he may ex-
end by the year: (6) and if any Sheriff returned
Knights to come to the Parliament, contrary to the
aid Ordinance, the Juſtices of Aſſizes in their
Seſſions of Aſſizes, ſhall have power by the authority
oreſaid thereof to enquire, (7) and if by inqueſt the
ame be found before the Juſtices, and the Sheriff
hereof be duly attainted, that then the ſaid Sheriff
ſhall incur the pain of an hundred pounds, to be paid
to our Lord the King, and alſo that he have Im-
priſonment by a year, without being let to main-
priſe or bail (8) and that the Knights for the Par-
liament returned contrary to the ſaid Ordinance,
ſhall loſe their wages.

Provided always, that he which cannot expend
forty Shillings by year, as afore is ſaid, ſhall in no wiſe
be Chuſer of the Knights for the Parliament; (2) and
that in every writ that ſhall hereafter go forth to the

Sheriff

Sheriffs to chuſe Knights for the Parliament, m
be made of the ſaid Ordinances.

Note

Though this Statute make the penalty on a Sh
but 100*l. for a falſe* Return, *yet* the Houſe *may*
ther puniſh him by Impriſonment &c. at their p
ſure by the Law and Cuſtom of Parliaments.

We ſhall now proceed to certain excellent Law
a latter Date, *made for the explanation and conſer*
tion of our Liberties, and in the firſt place pre
you with that excellent Petition of Right, gra
by King Charles *the firſt.*

Anno Regni Caroli Regis Tertio.

The PETITION *exhibited to His Majeſty by*
Lords Spiritual and Temporal, and Commons
this preſent Parliament aſſembled, concerning
verſe Rights and Liberties *of the Subjects.*

To the Kings moſt excellent Majeſty.

HUmbly ſhew unto our Soveraign Lord the Ki
the Lords *Spiritual* and *Temporal* and *Comm*
in Parliament aſſembled, That whereas it is declar
and enacted by a Statute made in the time of t
Reign of King *Edward* the firſt, commonly call
Statutum de Tallagio non Concedendo, that no Ta
lage or *Aid* ſhall be laid or Levyed by the King o
his Heirs in this Realm, without the *good Will a*
Aſſent of the Arch-biſhops, Biſhops, Earles, Baro
Knights, Burgeſſes, and other the *Freemen* of t
Commonalty of this Realm; (2) and by author
of Parliament holden in the five and twentieth ye
of the Reign of King *Edward* the third, it is decl

and Enacted, that from thenceforth no perſon ſhould be Compelled to make *any Loans* to the King againſt his Will, becauſe ſuch Loans were againſt reaſon, and the *Franchiſe of the Land*; (3) And by other Laws of this Realm it is provided, that one ſhould be Charged by any Charges or Impoſition called a *Benevolence*, nor by ſuch like Charge, (4) By which the Statutes before mentioned, and other the good Laws and Statutes of this Realm, your Subjects have *Inherited this Freedom*, that they ſhould not be Compelled to Contribute to any Tax, Tallage, Aid, or other like Charge, *not ſet by Common Conſent in Parliament.*

2. Yet nevertheleſs, of late divers *Commiſſions* directed to ſundry Commiſſioners in ſeveral Counties, with Inſtructions, have Iſſued, by means whereof your people have been in divers places Aſſembled and required to lend certain Sums of Money unto your Majeſty, and many of them, upon their refuſal ſo to do, have had *an Oath* adminiſtred unto them not warrantable by the *Laws* or Statutes of this Realm, and have been Conſtrained to become bound to make Apearance and give Attendance before your *Privy Council*, and in other places, and others of them have been therefore Impriſoned, Confined, and ſundry other ways moleſted and diſquieted; (2) and divers other Charges have been laid and levyed upon your people in ſeveral Counties by Lord Lieutenants and Deputy Lieutenants, Commiſſioners for Muſters, Juſtices of Peace, and others, by Command or Direction from your Majeſty or your Privy Council, againſt the Laws and free Cuſtoms of this Realm.

3. And where alſo by the Statute called the *great Charter* of the Liberties of *England*, it is declared and Enacted, that no Freeman may be taken or impriſoned, or be diſſeiſed of his Freehold or Liberties, or of his free Cuſtoms, or be outlawed or Exiled, or in

in any manner destroyed, but by the lawfull Judgment of his Peers, or by the Law of the Land.

4. And in the eight and twentieth year of the Reign of King *Edward* the third, it was declared, Enacted by Authority of Parliament, that no man of what Estate or Condition that he be, should be put out of his *Land or Tenements*, nor taken, nor *Imprisoned*, nor disherited, nor put to death, without being brought to answer, by due process of Law.

5. Nevertheless, against the tenor of the said Statutes and other the good Laws and Statutes of your Realm to that end provided, diverse of your Subjects of late have been *Imprisoned* without any cause shewed; (2) and when for their deliverance they were brought before Justices by your Majesties writ of *Habeas Corpus*, there to undergo and receive as the Court should order, and their keepers commanded to certify the causes of their detainour, no cause was certified, but that they were detained by your Majesties *special command*, signified by the Lords of your privy Council, and yet were returned back to several prisons without being charged with any thing, to which they might make answer according to the Law.

6. Whereas of late great *Companies of Souldiers* and Mariners have been dispersed into diverse Counties of the Realm, and the Inhabitants against their wills, have been compelled to receive them into their *Houses*, and there to suffer them to sojourn, against the Laws and Customes of this Realm, and to the great grievance and vexation of the People.

7. And whereas also by authority of Parliament in the five and twentieth year of the reign of King *Edward* the third, it is declared and enacted, that no man shall be forejudged of life and limb, against the form of the great Charter and Law of the Land; and by the said great Charter and other the Laws and Statutes of this your Realm, no man ought to

Judged to death, but by the Laws eſtabliſhed in this your Realm, either by the cuſtomes of the Realm, or by Acts of Parliament; (3) and whereas no offender of what kind ſoever, is exempted from the proceedings to be uſed, and puniſhments to be Inflicted by the Laws and Statutes of this your Realm; nevertheleſs, of late diverſe Commiſſions under Your Majeſties great Seal have iſſued forth, by which certain perſons have been Aſſigned and appointed Commiſſioners, with power and authority to proceed within the Land, according to the Juſtice of *Martial Law*, againſt ſuch Soldiers and Mariners, and other diſſolute perſons joining with them, as ſhould commit any murder, Robbery, Felony, Mutiny, or other Outrage or Miſdemeanour whatſoever, and by ſuch ſummary Courſe and Order as is agreeable to Martial Law, and as is uſed in Armies in time of war, to proceed to the Tryal and Condemnation of ſuch Offendors, and them to cauſe to be executed and put to death according to the Law Martial.

9. By pretext whereof ſome of Your Majeſties Subjects have been by ſome of the ſaid Commiſſioners *put to death*, when and where, if by the Laws and Statutes of the Land they had deſerved death, by the ſame Laws and Statutes alſo they might and by no other ought to have been Judged and Executed.

And alſo ſundry grievous offenders, by colour thereof, claiming an exemption, have Eſcaped the puniſhments due to them by the Laws and Statutes of this your Realm, by reaſon that diverſe of your Officers and Miniſters of Juſtice have unjuſtly refuſed or forborne to proceed againſt ſuch Offenders according to the ſame Laws and Statutes, upon pretence that the ſaid Offenders were puniſhable *only by Martial Law*, and by Authority of ſuch Commiſſions as aforeſaid; (2) which Commiſſions, and all other of like nature, are wholly and directly contrary to the ſaid Laws and Statutes of this your Realm.

10. They do therefore humbly pray your moſt Excellent Majeſty, that no man hereafter be compelled to make or yield any *Gift*, *Loan*, *Benevolence*, *Tax*, or ſuch like Charge, without Common conſent by act of Parliament; (2) and that none be called to make anſwer, or take ſuch oath, or to give attendance, or be confined, or otherwiſe moleſted or diſquieted concerning the ſame, or for refuſal thereof; (3) and that no freeman, in any ſuch manner as is before mentioned be Impriſoned or detained; (4) And that your Majeſty would be pleaſed to remove the ſaid Souldiers and Mariners, and that your people may not be ſo burthened in time to come; (5) and that the foreſaid Commiſſions for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commiſſions of like nature may Iſſue forth to any perſon or perſons whatſoever to be executed as aforeſaid, leſt by colour of them, any of your Majeſties Subjects be deſtroyed, or put to death contrary to the Laws and Franchiſe of the Land.

All

11. All which they moſt humbly pray of your moſt [illegible] Majeſty, *as their Rights and Liberties*, according to the [illegible] and Statutes of this Realm, and that your Majeſtie would vouchſafe to declare, that the awards, doings and proceed to the prejudice of your people in any of the premiſſes, not be drawn hereafter into Conſequence or Example; that your Majeſty would be alſo graciouſly pleaſed for the ther comfort and ſafety of your people, to declare your Will and Pleaſure, that in the things aforeſaid, all your Of and Miniſters ſhall ſerve you according to the Laws and Sta of this Realm, as they tender the honour of Your Ma and the proſperity of this Kingdom.

Which Petition being Read, the ſecond of *June*, 1628. Kings Anſwer was thus delivered unto it.

The King willeth, that Right be done, according to the and Cuſtoms of the Realm, and that the Statutes be put Execution, that His Subjects may have no Cauſe to compl any wrong, or oppreſſions, contrary to their juſt Rights and berties: To the Preſervation whereof, he holds himſelf in ſcience as well obliged, as of his Prerogative.

But this Anſwer not giving ſatisfaction, the King was Petitioned unto, that he would give a full and ſatisfactory to their Petition in full Parliament—Whereupon the Perſon, upon the ſeventh of *June*, made this Second Anſ

My Lords and Gentlemen!

The Anſwer I have already given you, was made with ſo Deliberation, and approved by the Judgment of ſo many Men, that I could not have Imagined, but that it ſhould given you full ſatisfaction; but to avoid all ambiguous pretations, and to ſhew you that there is no doubleneſs meaning, I am willing to pleaſe you *in words*, as well as *ſtance*, read your Petition, and you ſhall have an Anſwer am ſure will pleaſe you.

And then cauſing the Petition to be read diſtinctly by Clerk of the Crown, the Clerk of the Parliament read Kings Anſwer thereto in theſe words, *Soit Droit Fait, eſt deſire*, which is, *Let Right be done as is deſired.*

This Anſwer, and the manner of Confirming this Law, the rather recited, becauſe the Kings Anſwer and Circumſtances relating thereunto, are wholly left out in our laſt Printed *Book of Statutes.*

The *Petition* it ſelf is ſo plain that there needs no Comment thereon, only the Reader may obſerve that the things there mentioned were the antient Rights of the people, and therefore they expreſſly demand them of the King *as their Rights and Liberties.*

In the next place we ſhall add, the late excellent *Habeas Corpus Act*, becauſe relating to the ſame Subject, *viz.* The freeing the *Subject* from cauſeleſs tedious and Arbitrary Imprisonments

Tricesimo primo Caroli Secundi Regis.

CHAP. II.

Act for the better securing the Liberty of the Subject, annd for prevention of Imprisonments beyond Seas.

Commonly called the Habeas Corpus Act.

WHereas great delays have been used by Sheriffs, Goalers, and other Officers to whose Custody any of the Kings Subjects have been committed, for Criminal, or suppoſed Criminal matters, in making Returns of Writs of *Habeas Corpus* to them directed, by standing out an *Alias*, and *Pluries, Habeas Corpus*, and sometimes more, and making other shifts, to avoid their yielding obedience to the said Writs, contrary to their duty, and the known Laws of the Land, whereby many of the Kings Subjects have been, and hereafter may be long detained in Prison, in such Cases where by Law they are bailable, to their great Charges and Vexation.

II. For the prevention whereof, and the more speedy relief of all persons Imprisoned for any such Criminal, or suppoſed Criminal matters. (2.) Be it Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual, and Temporal, and Commons in this present Parliament Assembled, and by the Authority thereof, That whensoever any person or persons shall bring any *Habeas Corpus* directed unto any Sheriff, or Sheriffs, Goaler, Minister or other person whatsoever, for any person in his or their Custody, and the said Writ shall be served upon the said Officer, or left at the Goal or Prison with any of the under Officers, under Keepers, or Deputy of the said Officers or Keepers, that the said Officer or Officers, or their under Officers or Keepers or Deputies,

ſhall within three days after the ſervice thereof, a
aforeſaid (unleſs the Commitment aforeſaid were
Treaſon or Felony, plainly and ſpecially expreſſed
the Warrant of Commitment) upon payment
tender of the Charges of bringing the ſaid Priſ
to be Aſcertained by the Judge or Court that a
ded the ſame, and Endorſed upon the ſaid W
not exceeding twelve pence per Mile, and upo
curity given by his own Bond to pay the Charge
carrying back the Priſoner, if he ſhall be Remand
by the Court or Judge, to which he ſhall be bro
according to the true intent of this preſent Act
that he will not make any Eſcape by the way, n
Return of ſuch Writ. (3.) And bring or cauſe
be brought the Body, of the party ſo Committed
Reſtrained, unto, or before, the Lord Chancel
or Lord Keeper of the Great Seal of *England*
the time being, or the Judges or Barons of the
Court from whence the ſaid Writ ſhall Iſſue,
unto and before ſuch other perſon or perſons be
whom the ſaid Writ is made returnable, accord
to the Command thereof. (4.) And ſhall then
wiſe certifie the true Cauſes of his Detainer, or
priſonment, unleſs the Commitment of the
party be in any place beyond the diſtance of two
Miles from the place or places, where ſuch Court
Perſon is or ſhall be Reſiding: and if beyond
diſtance of twenty Miles, and not above one hu
dred Miles, than within the ſpace of twenty d
after ſuch the deliveryafore ſaid, and not longer

III. And to the Intent that no Sheriff, Gaol
or other Officer may pretend ignorance of the
port of any ſuch Writ. (2.) Be it Enacted by
Authority aforeſaid, That all ſuch Writs ſhall
marked in this manner, *Per ſtatutum Triceſimo*
mo Caroli *Secundi Regis*, and ſhall be ſigned by
perſon that Awards the ſame. (3.) And if
perſon or perſons ſhall be, or ſtand Committed

Detai

ed as aforesaid, for any Crime, unless for Fe-
or Treason, plainly expressed in the Warrant of
mitment, in the Vacation time, and out of
it shall and may be lawful to and for the person
ersons so Committed or Detained (other than per-
Convict, or in Execution) by Legal Process, or any
on his or their behalf, to Appeal, or complain to the
Chancellor, or Lord Keeper, or any one of
Majesties Justices either of the one Bench, or of
ther, or the Barons of the Exchequer of the
of the Coif. (3.) And the said Lord Chan-
Lord Keeper, Justices, or Barons, or any of
upon view of the Copy or Copies of the War-
or Warrants of Commitment and Detainer, or
wise upon Oath made, that such Copy or Co-
were denied to be given by such person or per-
or any on his, her, or their behalf, attested and
ibed by two Witnesses, who were present at
delivery of the same, to award and grant an
Corpus under the Seal of such Court whereof
shall then be one of the Judges. (5.) To be di-
ed to the Officer or Officers in whose Custody
rty so Committed or Detained, shall be re-
able immediately before the said Lord Chancel-
Lord Keeper, or such Justice, Baron, or any
Justice or Baron of the Degree of the Coif of
of the said Courts. (6.) And upon service
of as aforesaid, the Officer or Officers, his or
under Officer or under Officers, under Keeper
der Keepers, or Deputy to whose Custody the
is so Committed or Detained, shall within the
respectively before limited, bring such Priso-
Prisoners before the said Lord Chancellor or
Keeper, or such Justices, Barons, or one of
before whom the said Writ is made Returna-
and in case of his absence, before any other of
with the Return of such Writ, and the true
es of the Commitment, and Detainer. (7.) And
there-

thereupon, within two days after the party shall be brought before them, the said Lord Chancellor, Lord Keeper, or such Justice or Baron before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more surety or sureties in any sum, according to their discretion, having regard to the Quality of the Prisoner, and Nature of the Offence, for his or their appearance in the Court of Kings Bench the Term following, or at the next Assises, Sessions, or General Goal delivery of, and for such County, City, or Place, where the Commitment was, or where the Offence was Committed, or in such other County where the said Offence is properly Recognizable, as the Case shall require, and then shall Certifie the said Writ, with the Return thereof, and the said Recognizance or Recognizances, into the said Court where such appearance is to be made. (6.) Unless it shall appear, unto the said Lord Chancellor, or Lord Keeper, or Justice or Justices, Baron or Barons, that the party so Committed is Detained upon a Legal Process, Order, or Warrant, out of some Court that hath Jurisdiction of Criminal matters, or by some Warrant Signed and Sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such matters or offences for the which by the Law the Prisoner is not Bailable.

IV. Provided always, and be it Enacted, That if any person shall have wilfully neglected by the space of two whole Terms after his Imprisonment, to pray a *Habeas Corpus* for his Enlargement, such person so wilfully neglecting, shall not have any *Habeas Corpus* to be granted in Vacation time, in pursuance of this Act.

V. Be it further Enacted by the Authority aforesaid, That if any Officer or Officers, his or their

Under-Officer, Under-Officers, Under-Keeper, or Under-Keepers, or Deputy, ſhall neglect or Refuſe to make the Returns aforeſaid, or to Bring the Body or Bodies of the Priſoner or Priſoners according to the Command of the ſaid Writ, within the Reſpective Times aforeſaid, or upon demand made by the Priſoner, or Perſon in his Behalf; ſhall Refuſe to deliver, or within the ſpace of ſix hours after demand, ſhall not deliver to the Perſon ſo demanding, a true Copy of the Warrant or Warrants of Commitment and Detainer of ſuch Priſoner, which he or they are hereby required to deliver accordingly, all and every the ſaid Gaolers, and Keepers of ſuch Priſons, and ſuch other Perſon, in whoſe Cuſtody the Priſoner ſhall be Detained, ſhall for the firſt Offence forfeit to the Priſoner or Party Greived, the ſum of one hundred Pounds; (2.) And for the ſecond Offence, the ſum of two hundred pounds and ſhall and is hereby made Incapable to Hold or Execute his ſaid Office; (3.) The ſaid penalties to be Recovered by the Priſoner or Party grieved, his Executors or Adminiſtrators, againſt ſuch Offenders, his Executors or Adminiſtrators, by any Action of Debt, Suit, Bill, plaint or Information, in any of the King's Courts at *Weſtmin.* wherein no Eſſoign, Protection, priviledge Injunction, Wager of Law, or ſtay of Proſecution by *Non vult ulterius proſequi*, or otherwiſe, ſhall be Admitted or Allowed, or any more than one Imparlance (4.) And any Recovery or Judgment at the Suit of any Party Greived, ſhall be a ſufficient Conviction for the firſt Offence; and any after Recovery or Judgment at the Suit of a Party Greived for any Offence after the firſt Judgment, ſhall be a ſufficient Conviction to Bring the Officers or Perſon within the ſaid penalty for the ſecond Offence

6 And for the prevention of unjuſt Vexation by reiterated Committments for the ſame; (2.) Be it Enacted by the Authority aforeſaid, That no Perſon

or Persons which shall be delivered or set at Large upon any *Habeas Corpus*, shall at any time hereafter be again Imprisoned or Committed for the same Offence, by any Person or Persons whatsoever, other than by the Legal order, and process of such Court wherein he or they shall be Bound by Recognizance to appear, or other Court having Jurisdiction of the Cause; (3.) And If any other Person or Persons shall knowingly contrary to this Act Recommit, or Imprison, or knowingly procure or Cause to be Recommitted or Imprisoned for the same Offence, or pretended Offence, any Person or Persons delivered or set at Large as aforesaid, or be knowingly aiding or Assisting therein, then he or they shall forfeit to the Prisoner or Party Greived, the sum of five hundred pounds, any colourable pretence or variation in the Warrant, or Warrants of Commitment notwithstanding, to be Recovered as aforesaid.

7. Provided alwaies, and be it further Enacted That If any person or persons shall be Committed for High Treason or Felony, plainly and specially Expressed in the Warrant of Commitment, upon his prayer or petition in open Court the first week of the Term, or first day of the Sessions of *Oyer* and *Terminer*, or General Goal delivery, to be Brought to his Tryal, shall not be Indicted sometime in the next Term, Sessions of *Oyer* and *Terminer*, or General Goal delivery after such Commitment, It shall and may be Lawful to and for the Judges of the Court of Kings Bench, and Justices of *Oyer* and *Terminer* or General Goal delivery, and they are hereby Required upon motion to them made in open Court the last day of the Term, sessions, or Goal delivery either by the Prisoner, or any one in his Behalf, to set at Liberty the Prisoner upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term, Sessions or General Goal delivery; (2.)

any person or persons Committed as aforesaid, upon his prayer or petition in open Court, the first week of the Term, or first day of the Sessions of *Oyer* and *Terminer*, and General Goal delivery, to be Brought to his Tryal, shall not be Indicted and Tryed the second Term, Sessions of *Oyer* and *Terminer*, or General Goal delivery after his Commitment, or upon his Tryal shall be Acquitted, he shall be discharged from his Imprisonment.

8. Provided alwaies, That nothing in this Act shall extend to discharge out of prison any person charged with debt, or other Action, or with process in any Civil cause, but that after he shall be discharged of his Imprisonment for such his Criminal Offence, he shall be kept in Custody according to Law, for such other suit.

9. Provided alwaies, and be it Enacted by the Authority aforesaid, That if any person or persons subjects of this Realm, shall be Committed to any prison, or in Custody of any Officer or Officers whatsoever, for any Criminal, or Supposed Criminal matter, That the said person shall not be Removed from the said prison and custody, into the custody of any other Officer or Officers, (2.) unless it be by *Habeas Corpus*, or some other Legal writ; or where the prisoner is delivered to the Constable or other Inferiour Officer, to carry such prisoner to some common Goal; (3.) or where any person is sent by order of any Judge of Assize, or Justice of the peace to any Common workhouse, or house of Correction; (4.) or where the prisoner is Removed from one prison or place to another within the same County, in order to his or her Tryal or discharge in due Course of Law; (5.) or in case of sudden fire or Infection, or other Necessity; (6.) And If any person or persons shall after such Commitment aforesaid, make out and sign, or Countersign any Warrant or Warrants for such Removal aforesaid, contrary to this Act, as well he that makes or signs or Countersigns such Warrant

or Warrants as the Officer or Officers that obey Execute the ſame, ſhall ſuffer, and Incur the p and Forfeitures in this Act before mentioned, for the firſt and ſecond Offence Reſpectively, be Recovered in manner aforeſaid by the party Gr ed.

10. Provided alſo and be it further Enacted by Authority aforeſaid, That it ſhall and may be La to and for any priſoner and priſoners as aforeſaid, move, and obtain his or their *Habeas Corpus*, as out of the High Court of Chancery, or Court of E chequer, as out of the Courts of Kings Bench, or co mon pleas, or either of them; (2.) And if the Lord Chancellour or Lord Keeper or any Judg Judges, Baron or Barons for the time being, of degree of the *Coif* of any of the Courts aforeſai the Vacation time, upon view of the Copy or Co of the Warrant or Warants of Commitment or Det er, or upon Oath made that ſuch Copy or Co were denied as aforeſaid, ſhall deny any writ of *beas Corpus* by this Act Required to be Granted, ing moved for as aforeſaid, they ſhall ſeverally Forf to the priſoner or party Greived, the ſum of hundred pounds to be Recovered in manner afo ſaid.

11. And Be it Enacted, and declared by the A thority aforeſaid, That an *Habeas Corpus* accord to the true Intent and meaning of this Act, may be rected and Run into any County *Palatine*, the Cinq ports or other priviledged places within the Kingdo of *Engl.* Dominion of *Wales* or Town of *Berwick* on *Tweed*, and the Iſles of *Jerſey*, or *Guernſey*; any La or Uſage to the Contrary notwithſtanding.

12. And for preventing *Illegal* Impriſonment priſons beyond ſeas (2.) Be it further Enacted the Authority aforeſaid, That no ſubject of this Rea that now is, or hereafter ſhall be an Inhabitant or R ſant of this Kingdom of *England* dominion of *Wa*

Town of *Berwick* upon *Tweed*, ſhall or may be ſent priſoner into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or into any parts, Garriſons, Iſlands, or places beyond the ſeas, which are, or at any time hereafter, ſhall be within or without the Dominions of His Majeſty, His heirs or ſucceſſours, (3.) And that every ſuch Imprisonment is hereby Enacted and adjudged to be *Illegal*; (4.) and that if any of the ſaid ſubjects now is, or hereafter ſhall be ſo Impriſoned, every ſuch perſon and perſons ſo Impriſoned, ſhall and may for every ſuch Impriſonment, maintain by vertue of this Act, an Action or Actions of falſe Impriſonment, in any of his Majeſties Courts of Record, againſt the perſon or perſons by whom he or ſhe ſhall be ſo Commanded, detained, Impriſoned, ſent priſoner, or Tranſported Contrary to the true meaning of this Act, and againſt all or any perſon or perſons that ſhall frame, contrive, Write, Seal, or Counterſign any Warrant or Writing for ſuch Committment, detainer, Impriſonment, or Tranſportation or ſhall be Adviſing, aiding, or Aſſiſting in the ſame, or any of them; (5.) And the plaintiff in every ſuch action ſhall have judgment to Recover his Treble Coſts, beſides damages; which damages ſo to be Given, ſhall not be leſs than five hundred pounds; (6.) in which Action, no delay, ſtay or ſtop of proceeding, by Rule, order, or Command, nor no Injunction, protection, or priviledge whatſoever, nor any more than one Imparlance ſhall be allowed; Excepting ſuch Rule of the Court wherein the Action ſhall depend, made in open Court, as ſhall be thought in Juſtice neceſſary, for ſpecial cauſe to be Expreſſed in the ſaid Rule; (7.) And the perſon or perſons who ſhall Knowingly Frame, Contrive, Write, ſeal or Counterſign any Warrant for ſuch Committment, detainor or Tranſportation, or ſhall ſo Committ, detain Impriſon or Tranſport any perſon or perſons Contrary to this Act, or be any waies Adviſing, aiding or Aſſiſting therein being Lawfully Convicted

victed thereof, shall be disabled from thenceforth to Bear any Office of Trust or Profit within the Realm of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, or any of the Islands, Territories or Dominions thereunto Belonging, (8.) And shall Incur and sustain the pains, Penalties and Forfeitures Limited, ordained, and provided in and by the Statute of Provision and Premunire, made in the fifteenth year of King *Richard* the second (9.) And to be incapable of any pardon from the King, His Heirs or Successours, of the said Forfeitures, Losses, or disabilities, or any of them.

13. Provided alwaies, That nothing in this Act extend to give Benefit to any person who shall by Contract in Writing agree with any Merchant, or Owner of any plantation, or other person whatsoever, to be transported to any parts beyond the Seas, and receive Earnest upon such Agreement, although that afterwards such person shall Renounce such Contract.

14. Provided alwaies, and be it Enacted, That If any person or persons Lawfully Convicted of any Felony, shall in open Court pray to be Transported beyond the seas, and the Court shall think fit to leave him or them in prison, for that purpose such person or persons may be Transported into any parts beyond the seas; This Act or any thing therein Contained to the contrary notwithstanding.

15. Provided also, and be it Enacted, That nothing herein Contained, shall be deemed, Construed, or taken to Extend to the Imprisonment of any person before the first day of *June*, one thousand six hundred seventy and nine, or to any thing Advised, procured, or otherwise done, Relating to such Imprisonment; Any thing herein Contained to the Contrary notwithstanding.

16. Provided also, That If any person or persons at any time Resiant in this Realm, shall have committed any

any Capital Offence in *Scotl.* or *Ireland*, or any of the Islands, or Foreign Plantations of the King His Heirs or Successours, where he or she, ought to be Tryed for such Offence, such person or persons may be sent to such place, there to Receive such Tryal, in such manner as the same might have been used before the making of this Act; Any thing herein contained to the contrary notwithstanding.

17. Provided alwaies and be it Enacted, That no person or persons shall be sued, Impleaded, molested or Troubled for any Offence against this Act, unless the party offending be sued or Impleaded for the same within two years at the most after such time wherein the Offence shall be Committed in Case the party Greived shall not be then in prison, and if he shall be in prison, then within the space of two years after the decease of the person Imprisoned, or his, or her delivery out of prison, which shall first happen.

18. And to the Intent no person may Avoyd his Tryal at the Assizes, or General Goal delivery, by procuring his Removal before the Assizes at such time as he cannot be brought back to receive his Tryal there; (2.) Be it Enacted, That after the Assizes proclaimed for that County where the prisoner is detained, no person shall be Removed from the common Goal upon any *Habeas Corpus* granted in pursuance of this Act, but upon any such *Habeas Corpus*, shall be brought before the Judge of Assize in open Court, who is thereupon to do what to Justice shall Appertain.

19. Provided nevertheless, That after the Assizes are Ended, any person or persons detained may have his or her *Habeas Corpus* according to the direction and Intention of this Act,

20. And be it also Enacted by the Authority aforesaid That If any Information, Suit, or Action shall be Brought or Exhibited against any person or persons for any Offence committed, or to be committed against the form of this Law, it shall be Lawful for such defen-

dants to plead the General Issue, that they are Guilty, or that they own nothing, and to Give Special matter in Evidence to the Jury that shall the same, which matter being pleaded, had been good & sufficient in Law to have discharged the said Defendant or defendants against the said Information or Action, & the said matter shall be then as available to him or them, to all Intents and purposes, as if he they had sufficiently pleaded, set forth or Alledged the same matter in Bar or Discharge of such Information, Suit or Action.

21. And because many times persons charged with petty Treason or Felony, or as Accessaries thereunto are Committed upon suspition only, whereupon they are Bailable or not according as the Circumstances making out that suspition are more or less weighty which are best known to the Justices of Peace that committed the persons, and have the Examinations before them, or to other Justices of the Peace in the County: (2) Be it therefore Enacted, That where any person shall appear to be Committed by any Judge, or Justice of the Peace and charged as Accessary before the Fact, to any petty Treason or Felony, or upon suspicion thereof, or with suspicion of petty Treason or Felony, which petty Treason or Felony shall be plainly & specially expressed in the Warrant of Commitment that such person shall not be Removed or Bailed by vertue of this Act, or in any other manner than they might have been before the making of this Act.

The Comment.

THere are three things, which the Law of *England* (which is a Law of Mercy) principally Regards and taketh care of, *viz. Life, Liberty* and *Estate*. Next to a man's Life, the nearest thing that concerns him, is *freedom of his person*, For indeed what is Imprisonment, but a kind of *Civil death*? Therefore saith *Fortescue Cap.* 42. *Angliæ Jura in omni Casu Libertati dant favorem.* The Laws of *England* do in all Cases favour Liberty. Touching

Touching *Commitments* and what is Required to make a *Legal Mittimus*, see before Pag. 27.

The Writ of *Habeas Corpus* is a Remedy given by the common Law for such as were unjustly detained in custody, to procure their Liberty: But before this statute, was Rendred far less useful than it ought to be partly by the Judges, pretending a power to Grant, or deny the said Writ at their pleasure, in many cases, and Especially by the Ill practises of Sheriffs and Goalers by putting the prisoner to the charge and trouble of an *Alias* and *pluries* (that is a second and third Writ, before they would obey the first, for there was no penalty till the Third) and then at last the Judges would oft-times Alleadge, That they could not take Bail, because the party was a *prisoner of State*, &c. Therefore to Remedy all those mischiefs this *most wholsome Law* was provided. Which we shall briefly Endeavour to Divide into its several Branches, and Explain it to the meanest Capacities, since no man is sure, but one time or other, he may have occasion, to make use of it.

This Act concerneth either first persons committed for some other Criminal or supposed Criminal matter, besides *Treason* or *Felony*, and these are to have an *Habeas Corpus* Immediately; 2ly such who in their *Mittimus* are charged with *Treason on Felony*, and these shall have the benefit of the said Writ after the time herein Limited. 1st. If any Goaler or Under-Keeper shall not deliver a *true Copy* of the *Mittimus* within 6 *hours* after the prisoner demands it, the Head-Gaoler or Keeper forfeits to the prisoner for the first Offence 100 *l.* for the second Offence 200*l.* and loses his place. Nor is there any *Fee* to be paid for the same, the Turn-key must deliver it at his peril. And note if the prisoner should be lockt up, or none suffered to come at him any friend of his may demand the same on his behalf. 2d. Whatever the Criminal matter be, If Treason or Felony be not Expresly charged, any person

on the prisoners behalf, carrying such *true* Co[py] of the Commitment to the Lord Chancellor, or *one* of the Judges, or Barons of the Exchequer or [on] on Oath made that a Copy was demanded and denied, he shall Grant an *Habeas Corpus*, or forfeit 500 [l.] to the prisoner; But note, the Request must be made [to] such Judge *in Writing*, and Attested by two witnesses.

3. If the Sheriff or Goaler do not carry up the prisoner and Return the true causes of his detainer within *three* days, If under twenty miles distance, or within *ten daies* if above twenty, and under an hundred miles, or within *twenty daies* if above an hundred miles, he forfeits 500 *l.* to the prisoner.

Note the prisoner must pay the *Charges* of his carrying up, and the Judge when he Grants the Writ may order how much, but it must not be above 12 *d.* a mile.

If upon the Return of such *Habeas Corpus*, it appear the prisoner is not charged with *Treason* or *Felony*, *specially and plainly Expressed*, or for such matters, as by Law are *not Bailable*, the Judge shall discharge the prisoner upon Bail.

4. If a person once so Bailed out, shall again be Imprisoned for the same Offence, those that do it forfeit 500 *l.*

5. If there be High Treason or Felony *plainly and specially Expressed* [That is, not only Generally, as Treason or Felony, but Treason in conspiring to kill *the King*, or in *Counterfeiting the King's Coin*, or Felony, for *stealing the goods* of such an one to such a value, *&c.*] Then the Prisoner cannot have his *Habeas Corpus*, till first he has on the first week of the Term, or first day of Sessions of *Oier* and *Terminer*, or General Gaol-delivery petitioned in open Court to be brought to his *Tryal*; and then if he be not brought to Tryal the next Term, or Sessions following, on the *last day* thereof, he shall be *Bailed*; and if not Indicted the second Term or Sessions, shall be discharged.

6. This

This Act extends to *all places* within *England* and *Wales*; the *Tower* cannot be supposed to be excepted, nor *Windsor Castle*, nor any such Royal Forts; for the words are general: And besides, there is a special Act of Parliament, that unites the King's Castles to the Counties wherein they stand; there having been it seems some pretensions and ill practices to hold them distinct, that therein they might detain men prisoners against Law, and not admit any writ to enlarge them. For Remedy whereof it was then Enacted;

Anno 13. *Rich. Secundi.*

Item. *It is Ordained and Assented, That the King's Castles and Gaols which were wont to be Joyned to the Shires of the Counties, and be now Severed, shall be Rejoyned to the same Counties.*

Lastly, No person shall be sent Prisoner out of *England* or *Wales*, into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or any other place beyond the Seas.

The Provisos and other Clauses of this Act may be easily apprehended by the meanest capacities

AND, As the Law provides thus for our *Liberty*, so it takes care, that those that *are in Custody*, shall not be abused or oppressed; to which purpose I shall here insert so much as is material & necessary to be known by all persons, who are so unhappy as to be prisoners, out of the Statute of the 22d. and 23d. *Car.* 2. *cap.* 20. The words whereof are as follows:

'WHEREAS persons that are under Arrests, or committed to the Custody of Sheriffs, Bailiffs, Gaolers, Keepers of Prisons, or Gaols, are much abused and wronged by Extorting of great Fees, Rewards, and other Exactions, and put to great Expences under pretences of favour, or otherwise, whereby they are greatly Oppressed, and many times Ruined in their Estates. (2.) For Remedy thereof, Be it Enacted by the Authority aforesaid, That if any Under-Sheriff, Bailiff, Serjeant at Mace, or other Officer or Minister

'Miniſter whatſoever, ſhall at any time or time 'hereafter, have in his or their Cuſtody, any perſon 'or perſons by virtue or colour of any Writ, Proceſs 'or other Warrant whatſoever, it ſhall not be lawful 'for ſuch Officer or Officers, to convey or carry, or 'cauſe to be conveyed or carried the ſaid perſon or 'perſons to any Tavern, Ale-houſe, or other publick 'Victualling or Drinking-houſe, without the free and 'voluntary conſent of the ſaid perſon or perſons, ſo as 'to charge ſuch Priſoner with any Sum of Money for 'any Wine, Beer, Ale, Victuals, Tobacco, or any 'other things whatſoever, but what the ſaid perſon 'or perſons ſhall call for, of his, her, or their own 'accord. (3.) And ſhall not demand, take or re'ceive, or cauſe to be demanded, taken or received, 'directly or indirectly, any other, or greater Sum or 'Sums than what by Law ought to be taken or de'manded for ſuch Arreſt, taking, or waiting (until 'ſuch perſon or perſons ſhall have procured an Ap'pearance, found Bail, agreed with his or their Ad'verſaries, or be ſent to the proper Gaol belonging to 'the County, City, Town or Place where ſuch Ar'reſt or taking ſhall be.) (4) Nor take and Exact 'any other Reward or Gratuity for ſo keeping the 'ſaid perſon or perſons out of the Gaol or Priſon, 'than what he, ſhe or they ſhall or will of his, her or 'their own accord, voluntarily and freely give. '(5.) Nor take, nor receive any other, or greater 'Sum or Sums for each nights Lodging, or other Ex'pences, than what is reaſonable and fitting in 'ſuch caſes, or ſhall be ſo adjudged by the next 'Juſtice of the Peace, or at the next Quarter Seſ'ſions. (6.) And ſhall not cauſe or procure the ſaid 'perſon or perſons, to pay for any other Wine, Beer, 'Ale, Victuals, Tobacco, or other things, than what 'the ſaid perſon or perſons ſhall voluntarily, freely, 'and particularly call for.

'And that every Under-Sheriff, Gaoler, Keeper 'of

Prison or Gaol, and every person or persons whatsoever, to whose Custody any person or persons shall be delivered or committed, by virtue of any Writ of Process, or any pretence whatsoever, shall permit and suffer the said person or persons, at all and their will and pleasure, to send for, and have any Beer, Ale, Victuals, and other necessary Food, where, and from whence they please; and also to have and use such Bedding, Linnen, and other things, as the said person or persons shall provide for, without any purloyning, detaining or keeping for the same, or any part thereof; nor shall demand, take or receive of the said person or persons, any other, or greater Fee or Fees whatsoever, for his, her, or their Commitment, Release or Discharge; or for his, her, or their Chamber-Rent, than what is allowable by Law, until the same shall be settled by three Justices of the Peace, whereof one to be of the *Quorum*, of each particular County, City and Town Corporate, in their several Precincts; and for the City of *London*, and Counties of *Middlesex* and *Surrey*, the two Lord Chief Justices of the *King's-Bench* and *Common-Pleas*, and the Lord Chief Baron, or any two of them, and the Justices of the Peace of the same, in their several Jurisdictions. And likewise that the said Lord Chief Justices, Lord Chief Baron, and Justices of the Peace in their several Jurisdictions, and all Commissioners for Charitable Uses, do their best Endeavours, and Diligence to Examine, and find out the several Legacies, Gifts and Bequests bestowed and given for the Benefit and Advantage of the Poor Prisoners for Debt in the several Gaols and Prisons in this Kingdom, and to send for any Deeds, Wills, Writings, and Books of Accompts whatsoever; and any person or persons concerned therein, and to Examine them upon Oath, to make true discovery thereof which they have full Power and Authority hereby

to

'to do) and the same so found out and ascertained
'to order and settle in some manner and way, that
'the Prisoners hereafter may not be defrauded of
'Receive the full benefit thereof, according to the
'true Intent of the Donors.

'And that these Accounts of the several Legacies
'Gifts and Bequests, given and bestowed upon the
'several Prisoners for Debt, within this Kingdom
'and the several Rates of Fees, and the future Go-
'vernment of Prisons, be signed and confirmed by
'the Lord Chief Justices, and Lord Chief Baron, or
'any two of them for the time being, and the Justices
'of the Peace in *London*, *Middlesex* and *Surrey*; and
'by the Judges for the several Circuits, and Justices of
'the Peace for the time being, in their several Pre-
'cincts, and fairly written and hung up in a Table in
'every Gaol and Prison, before the first day of Ja-
'nuary, 1671. and likewise be Registred by each
'and every Clerk of the Peace within his or their
'particular Jurisdiction: And after such Establishment
'no other or greater Fee or Fees than shall be so
'Established, shall be Demanded or Received.

'And whereas it is become the common practice
'of Gaolers, and Keepers of *Newgate*, the *Gate-house*
'at *Westminster*, and sundry other Gaols and Prisons,
'to Lodge together in one Room, or Chamber and
'Bed, Prisoners for Debt, and Felons, whereby many
'times honest Gentlemen, Trades-men and
'others, Prisoners for Debt, are disturbed and hin-
'dered in the night-time from their natural Rest, by
'reason of their Fetters and Irons, and otherwise
'much offended and troubled by their lewd and pro-
'phane Language and Discourses, with most horrid
'Cursing and Swearing (much accustomed to such
'persons;) (2.) Be it Enacted by the Authority
'aforesaid, That it shall not be lawful hereafter for
'any Sheriff, Gaoler, or Keeper of any Gaol or Pri-
'son, to put, keep or Lodge Prisoners for Debt, and

'Felons

[illegible] together in one Room or Chamber; but that [illegible] shall be put, kept, and Lodged separate and [illegible] one from another, in distinct Rooms, (3.) Upon [illegible] that he, she, or they which shall offend against [illegible] Act, or the true Intent and meaning thereof, or [illegible] part thereof, shall forfeit, and lose his or her [illegible], Place or Imployment, and shall forfeit treble [illegible] to the party grieved, to be Recovered by [illegible] of this Act, any Law, Statute, Usage or Cu[illegible] to the contrary in any wise notwithstanding.

And to the End that English-men may more [illegible] enjoy their due Freedoms, the prudence of [illegible] Legislators have thought fit from time to time to [illegible] Encroachments thereupon, though under [illegible] of Jurisdictions and Courts of Justice; and [illegible] prohibit any Exorbitant Arbitrary Power for the [illegible], but that all things may be left to the calm [illegible] equal proceedings of Law; and that most excel[illegible] Method of Trial by *Juries*, one of the principal [illegible] of *England's* Liberties. For an Instance [illegible], take the Act following.

An Act for Regulating of the Privy Council, and for taking away the Court commonly called the Star-Chamber.

WHereas by the Great Charter many times confirmed in Parliament, it is [illegible], That no Freeman shall be taken or Im[illegible], or Disseized of his Freehold or Liberties, [illegible] Free Customs, or be Outlawed or Exiled, or other[illegible] destroyed; and that the King will not pass [illegible] him, or condemn him, but by lawful Judg[illegible] of his Peers, or by the Law of the Land: [illegible] And by another Statute made in the fifth [illegible] of the Reign of King *Edward*, it is Enacted, [illegible] no man shall be Attached by any Accusation, [illegible] fore judged of Life or Limb, nor his Lands, Tenements, Goods nor Chattels seized into the

King's

King's Hands against the Form of the Great Charter, and the Law of the Land. (3.) And by another Statute made in the five and twentieth year of the Reign of the same King *Edward* the third, it is Accorded, Assented, and Established, That no man shall be taken by Petition, or Suggestion made to the King, or to his Council, unless it be by Indictment or Presentment of good and lawful people of the same Neighbourhood, where such Deeds be done, in due manner, or by Process made by Writ Original at the Common Law; and that none be put out of his Franchise or Freehold, unless he be duly brought in to Answer, and forejudged of the same, by the course of the Law. And if any thing be done against the same, it shall be Redressed and holden for none. (4.) And by another Statute made in the eight and twentieth year of the Reign of the same King *Edward* the Third, it is amongst other things Enacted, That no man of what Estate or Condition soever he be, shall be put out of his Lands or Tenements, nor taken, nor Imprisoned, nor Dis-inherited, without being brought in to Answer by due Process of Law. (5.) And by another Statute made in the two and fortieth year of the Reign of the said King *Edward* the Third, it is Enacted, That no man be put to Answer without Presentment before Justices, or matter of Record, or by due Process and Writ Original, according to the Old Law of the Land; and if any thing be done to the contrary, it shall be void in Law, and holden for Errour. (6.) And by another Statute in the six and thirtieth year of the Reign of the same King *Edward* the Third it is amongst other things Enacted, That all Pleas which shall be pleaded in any Courts before any of the King's Justices, or in his other places, or before any of his other Ministers, or in the Courts and places of any other Lords within the Realm, shall

be

Entred and Enrolled in Latine: (7.) And whereas by the Statute made in the third year of King *Henry* the Seventh, Power is given to the Chancellor, the Lord Treasurer of *England*, for the time being, and the Keeper of the King's Privy Seal, or any two of them, calling unto them a Bishop, and a Temporal Lord of the King's Most Honourable Council, and the Two Chief Justices of the King's Bench and Common Pleas for the time being, or other two Justices in their Absence, to proceed as in that Act is expressed, for the punishment of some particular Offences therein mentioned: (8.) And by the Statute made in the one and twentieth year of King *Henry* the Eighth, the President of the Council is Associated to joyn with the Lord Chancellor, and other Judges in the said Statute of the Third of *Henry* the Seventh mentioned: (9.) But the said Judges have not kept themselves to the points limited by the said Statute, but have undertaken to punish where no Law doth warrant, and to make Decrees for things having no such Authority, and to inflict heavier punishments than by any Law is warranted.

'And forasmuch as all matters Examinable or Determinable before the said Judges, or in the Court commonly called the *Star-Chamber*, may have their proper Remedy & Address, & their due punishment & correction by the Common Law of the Land, and in the ordinary course of Justice elsewhere: (2.) And forasmuch as the Reasons and Motives inducing the Erection and Continuance of that Court do now cease: (3.) And the Proceedings, Censures and Decrees of that Court, have by Experience been found to be an Intollerable Burthen to the Subject, and the means to Introduce an Arbitrary Power and Government: (4.) And forasmuch as the Council-table hath of late times assumed unto it self a Power to Intermeddle in Civil, and

'matters

'matters only of private Interest between Party a
'Party, & have adventured to determine of the Est
'& Liberties of the Subjects, contrary to the Law
'the Land, and the Rights and Priviledges of the Su
'ject, by which great and manifold mischiefs and
'conveniences have arisen and happened, and m
'Incertainty by means of such proceedings hath be
'conceived concerning mens Rights and Estates; f
'settling whereof, and preventing the like in ti
'to come;

'3. Be it Ordained and Enacted by the Authori
'of this present Parliament, That the said Court co
'monly called the Star-Chamber, and all Jurisdi
'on, Power and Authority belonging unto, or Exe
'cised in the same Court, or by any the Judges, O
'ficers or Ministers thereof, be from the first day
'*August*, in the year of our Lord God, one thous
'six hundred forty and one clearly and absolutely
'solved, taken away and determined; (2.) And th
'from the said first day of *August*, neither the L
'Chancellour or Keeper of the great seal of *Engl*
'the Lord Treasurer of *England*, the Keeper of t
'Kings privy seal, or President of the Council,
'any Bishop, Temporal Lord, privy Councellour,
'Judge, or Justice whatsoever, shall have any po
'or Authority to hear, examine or determine any
'ter or thing whatsoever in the said Court comm
'ly called the Star-Chamber or to make, pronou
'or deliver any Judgment, Sentence, Order or De
'or to do any Judicial or Ministerial Act in the
'Court: (3.) And that all and every Act and Ac
'Parliament, and all and every Article, clause,
'Sentence in them, and every of them, by which
'Jurisdiction, power, or Authority is given, Lim
'or appointed, unto the said Court commonly cal
'the Star-Chamber, or unto all, or any the Judge
'ficers or Ministers thereof, or for any proceed
'to be had or made in the said Court, or for any

ter or thing to be drawn into question, Examined or determined there, shall for so much as concerneth the said Court of Star-Chamber, and the power and authority thereby Given unto it, be from the said first day of *August* Repealed and Absolutely Revoked and made void.

4. And be it likewise Enacted, That the the Jurisdiction now used and Exercised in the Court before the President and Council in the *Marches of Wales*; (2.) and also in the Court before the President and Council Established in the Northern parts; (3.) and also in the Court commonly called, the Court of the Dutchy of *Lancaster*, held before the Chancellour and Council of that Court; (4.) and also in the Court of Exchequer of the County Palatine of *Chester*, held before the Chamberlain and Council of that Court; (5.) The like Jurisdiction being Exercised there, shall from the said first day of *August*, one thousand six hundred, forty and one, be also Repealed and Absolutely Revoked, and made void, any Law, prescription, Custom or Usage, or the said statute made in the third year of King *Henry* the Seventh, or the statute made the one and twentieth of *Henry* the Eighth, or any Act or Acts of Parliament heretofore had or made, to the Contrary thereof in any wise notwithstanding; (6.) And that from henceforth no Court, Council, or Place of Judicature shall be Erected, Ordained, constituted or appointed within this Realm, of *England*, or Dominion of *Wales*, which shall have, use or Exercise, the same, or the like Jurisdiction, as is or hath been used, practised, or Exercised in the said Court of Star-Chamber.

5. Be it likewise declared and Enacted by Authority of this present Parliament, That neither His Majesty, nor His Privy Council, have or ought to have any Jurisdiction, power or Authority by *English* Bill, Petition, Articles, Libel, or any other Arbi-

trary

'trary way whatsoever, to Examine or draw in
'question, determine or dispose of the Lands, Tene-
'ments, Hereditaments, goods or Chattels of any of the
'Subjects of this Kingdom; but that the same ought
'to be tryed and determined in the ordinary Course
'of Justice, and by the ordinary course of the Law.

'6. And be it further provided and Enacted That
'If any Lord Chancellor, or Keeper of the Great Seal
'of *England*, Lord Treasurer, Keeper of the Kings Pri-
'vy Seal, President of the Council, Bishop, Temporal
'Lord, Privy Councellor, Judge or Justice whatso-
'ever, shall offend, or do any thing contrary to the
'purport, true intent and meaning of this Law, That
'he or they shall for such offence forfeit the sum of
'five hundred pounds of lawful Money of *England*
'unto any party grieved, his Executors or Adminis-
'strators, who shall really prosecute for the same,
'and first obtain Judgment thereupon, to be Reco-
'vered in any Court of Record at *Westminster*, by
'Action of Debt, Bill, Plaint or Information, wherein
'no Essoign, Protection, Wager of Law, Aid-prayer,
'Priviledge, Injunction or Order of Restraint, shall
'be in any wise prayed, granted or allowed, nor any
'more than one Imparlance: (2) And if any person
'against whom any such Judgment or Recovery shall
'be had as aforesaid, shall after such Judgment or
'Recovery, offend again in the same, then he or they
'for such offence shall forfeit the Sum of one thou-
'sand pounds of lawful Money of *England*, unto any
'party grieved, his Executors or Administrators, who
'shall really prosecute for the same, and first obtain
'Judgment thereupon, to be Recovered in any Court
'of Record at *Westminster*, by Action of Debt, Bill,
'Plaint or Information, in which no Essoign, Pro-
'tection, Wager of Law, Aid-prayer, Priviledge, In-
'junction or Order of Restraint, shall be in any wise
'prayed, granted or allowed, nor any more than
'one Imparlance: (3) And if any person against

'whom

whom any such second Judgment or Recovery shall be had as aforesaid, shall after such Judgment or Recovery, offend again in the same kind, and shall be thereof duly convicted by Indictment, Information, or any other lawful way or means, that such person so convicted, shall be from thenceforth disabled, and become by virtue of this Act Incapable, *ipso facto*, to Bear his and their said Office and Offices Respectively; (4.) And shall be likewise disabled to make any Gift, Grant, Conveyance, or other Disposition of any of his Lands, Tenements, Hereditaments, Goods or Chattels; or to take any Benefit of any Gift, Conveyance or Legacy to his own use.

7. 'And every Person so offending shall likewise forfeit and lose to the party grieved, by any thing done contrary to the true intent and meaning of this Law, his treble Damages, which he shall sustain and be put unto, by means or occasion of any such Act or thing done, the same to be Recovered in any of His Majesties Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint or Information, wherein no Essoign, Protection, Wager of Law, Aid-prayer, Priviledge, Injunction or Order of Restraint, shall be in any wise prayed, granted or allowed, nor any more than one Imparlance.

8. 'And be it also provided and Enacted, That if any person shall hereafter be Committed, Restrained of his Liberty, or suffer Imprisonment, by the Order or Decree of any such Court of Star-Chamber, or other Court aforesaid, now, or at any time hereafter, having, or pretending to have the same or like Jurisdiction, Power or Authority to Commit or Imprison us aforesaid: (2) Or by the Command or Warrant of the King's Majesty, His Heirs and Successors in their own Person, or by the Command or Warrant of the Council-board; or of any of the Lords or others of His Majesties Privy-

Council

'Council: (3.) That in every such Case, every per-
'son so Committed, Restrained of his Liberty, or suf-
'fering Imprisonment, upon demand or motion
'made by his Council, or other Imployed by him
'for that purpose, unto the Judges of the Court of
'King's-Bench, or Common-Pleas in open Court,
'shall without delay, upon any pretence whatsoever
'for the Ordinary Fees usually paid for the same,
'have forthwith granted unto him a Writ of *Habeas*
'*Corpus*, to be directed generally unto all and every
'Sheriffs, Gaoler, Minister, Officer, or other person in
'whose Custody the person Committed or Restrain-
'ed shall be: (4.) And the Sheriffs, Gaoler, Mini-
'ster, Officer, or other person, in whose Custody the
'party so Committed or Restrained shall be, shall
'at the Return of the said Writ, and according to
'the command thereof, upon due and convenient
'notice thereof given unto him, at the Charge of
'the party who requireth or procureth such Writ,
'and upon Security by his own Bond given, to pay
'the Charge of carrying back the Prisoner, if he shall
'be Remanded by the Court to which he shall be
'brought; as in like cases hath been used, such Char-
'ges of bringing up, and carrying back the Prisoner, to
'be alwaies Ordered by the Court, if any difference
'shall arise thereabout, bring, or cause to be brought
'the Body of the said Party so Committed or Re-
'strained unto and before the Judges or Justices of
'the said Court, from whence the same Writ shall
'Issue, in open Court: (5.) And shall then likewise
'certifie the true Cause of such his Detainour or Im-
'prisonment, and thereupon the Court within three
'Court-daies after such Return, made and delivered
'in open Court, shall proceed to Examine and De-
'termine, whether the Cause of such Commitment
'appearing upon the said Return, be Just and Legal,
'or not, and shall thereupon do what to Justice
'shall appertain, either by Delivering, Bailing, or
'Remand-

Remanding the Prisoner: (6.) And if any thing shall be otherwise wilfully done, or omitted to be done by any Judge, Justice, Officer, or other person aforementioned, contrary to the direction and true meaning hereof, then such person so offending shall forfeit to the party grieved, his treble Damages, to be Recovered by such means, and in such manner as is formerly in this Act limited and appointed for the like penalty to be Sued for and Recovered.

2. Provided alwaies, and be it Enacted, That this Act, and the several Clauses therein contained, shall be taken and Expounded to Extend only to the Court of Star-Chamber: (2.) And to the said Courts holden before the President and Council in the Marches of *Wales*: (3.) And before the President and Council in the Northern parts: (4.) And also to the Court commonly called the Court of the Dutchy of *Lancaster*, holden before the Chancellor and Council of that Court: (5.) And also in the Court of Exchequer, of the County Palatine of *Chester*, held before the Chamberlain, and Council of that Court: (6.) And to all Courts of like Jurisdiction to be hereafter Erected, Ordained, Constituted, or Appointed as aforesaid; and to the Warrants and Directions of the Council-board, and to the Commitments, Restraints and Imprisonments of any person or persons made, commanded or awarded by the King's Majesty, His Heirs or Successors in their own person, or by the Lords and others of the Privy-Council, and every one of them.

3. And lastly, Provided and be it Enacted, That no person or persons shall be Sued, Impleaded, Molested or Troubled for any Offence against this present Act, unless the party supposed to have so Offended shall be sued or Impleaded for the same within two years at the most after such time, wherein the said Offence shall be committed.

The

The Comment.

THE Court of *Star-Chamber* (ſo called, becauſe held in a Chamber at *Weſtminſter*, the Roof of which is garniſht with Golden *Stars*) was not originally Erected, but confirmed and eſtabliſht by the *Stat.* of the 3. *H.* 7. *Ca.* 1. For there had *before* been ſome ſuch Juriſdiction, as *Cook* obſerves 4. *Inſtit. fo.* 62. yet there is reaſon to believe, That it grew up rather by *Connivance* and Uſurpation, than any due courſe of Law. The Crimes it pretended to puniſh were the Exorbitant Offences of Great Men, (whom Inferiour Judges and Jurors (though they ſhould not) would in reſpect of their Greatneſs be afraid to offend) Bribery, Extortion, Maintenance, Champerty, Imbracery, Forgery, Perjury, Libelling, Challenges, Duels, *&c.* Their proceedings were by *Engliſh Bill* and Proceſs under the Great Seal; and the puniſhments by them inflicted were *Fines*, *Impriſonment*, *Pillory*, *Cutting off Ears*, &c. But whatever pretence there were for the ſetting up this Court at firſt, 'tis certain it was made uſe of as a property of Arbitrary Power to *Cruſh* any whom the Ruling *Miniſters* and *Favourites* had a mind to deſtroy; and indeed there were *Three* things in the very nature of this Court which were deſtructive to the Original *Conſtitution* of our *Engliſh* Government and Liberties. 1. They proceeded without *Juries*. 2. They pretended to a Power to Examine men upon their *Oaths* touching Crimes by them ſuppoſed to be committed, which is contrary to all Law and Reaſon; For, *Nemo tenetur ſeipſum Accuſare: No man is bound to Accuſe himſelf.* 3. The Judges of this Court proceeded by *no known Law or Rules*, but were left at Liberty to Act Arbitrarily, and according to their own pleaſures; whereas the Law of *Engl.* hates to leave to any ſuch an unlimited Power, but as it marks out the ſeveral *ſpecies*

Crimes, ſuch or ſuch an Act ſhall be *Treaſon*; this ſay, that *petty Larceny*, &c. So it awards certain and ſitive *Puniſhments*, proportionate to each of them. refore this Court being found a *Grievance* to the bject, was by this Act diſſolved and taken away.

And to the intent nothing of the like kind ſhould any other name be practiſed for the future, it is clared and Enacted, That the King and His Privy ncil ſhall not queſtion or diſpoſe of the Lands or ods of any Subjects; And if they do, each Privy ncillor preſent forfeits 500*l.* to the party grieved.

A Clauſe in the Act of 31. *Car.* 2. *C.* 1.

Whereas by the Laws and Cuſtoms of this Realm, the bitants thereof cannot be compelled againſt their wills ive Souldiers into their Houſes, and to ſojourn there, Be it Declared and Enacted by the Authority ſaid, That no Officer, Military or Civil, nor any other whatever, ſhall from henceforth preſume to Place, er or Billet any Souldier or Souldiers upon any Subject habitant of this Realm, of any degree, quality or pro- whatever, without his conſent; And that it ſhall, y be lawful for every ſuch Subject and Inhabitant, to to Sojourn or Quarter any Souldier or Souldiers, not- ſtanding any Command, Order, Warrant or Billeting ever.

HAVING thus recited ſeveral of the moſt mate- Statutes provided by the care and wiſdom of our eſtors and prudent Legiſlators for the Guarding Securing our *Engliſh Liberties*, I ſhall now for Reader's Information proceed to add certain *Laws* of another nature; And firſt give the der all the Statutes at this day in force againſt *ſant Diſſenters* upon the account of Religion; And ndly, an Abſtract of all the Laws againſt *Papiſts*. And in order to the firſt of theſe, we begin with *ute* touching the Writ *De Excommunicato Capi-* upon which many people have been proſecuted. ch Act is as followeth:

Anno Quinto Reginæ Elizabethæ, Ca. 23.
An Act for the due Execution of the Writ *De Excommunicato Capiendo.*

'FOraſmuch as divers perſons offending in many 'great Crimes and Offences appertaining meerly to the Juriſdiction and Determination of the Eccleſiaſtical Courts and Judges of this Realm, are many times unpuniſhed for lack and want of the good and due Execution of the Writ *de Excommunicato Capiendo*, directed to the Sheriff of any County, for the taking and apprehending of any ſuch Offenders: (2.) The great abuſe whereof, as it ſhould ſeem, hath grown, for that the ſaid Writ is not Returnable in any Court, that might have the Judgment of the well Executing and Serving of the ſaid Writ, according to the Contents thereof: (3.) But hitherto have been left only to the diſcretion of the Sheriffs and their Deputies, by whose Negligences and Defaults, for the moſt part, the ſaid Writ is not Executed upon the Offenders as they ought to be: (4.) By reaſon whereof, ſuch Offenders be greatly encouraged to continue their ſinful and criminous Life, much to the diſpleaſure of Almighty God, and to the great contempt of the Eccleſiaſtical Laws of this Realm.

2. Wherefore, for the Redreſs thereof, be it Enacted by the Queens moſt Excellent Maieſty, with the aſſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame; That from and after the firſt day of May next coming, every Writ of *Excommunicato Capiendo*, that ſhall be granted and Awarded, out of the high Court of Chancery againſt any perſon or perſons within the Realm of *England*, ſhall be made in the time of the Term (and Returnable before the Queens Highneſs, her He-

Succeſſors in the Court commonly called the *Kings Bench*, in the Term next after the *Teſte* of the ſame Writ; (3.) And the ſame Writ ſhall be made to contain at the leaſt 20 days between the *Teſte* and the Return thereof; (4.) and after the ſame Writ ſhall be ſo made and ſealed, that then the ſaid Writ ſhall be forthwith brought into the ſaid Court of *Kings-Bench* and there in the preſence of the Juſtices ſhall be opened and delivered of Record to the Sheriffs or other officer, to whom the ſerving and Execution thereof ſhall appertain, or to his or their Deputy or Deputies: (5.) And if afterwards it ſhall or may appear to the Juſtices of the ſame Court for the time being, that the ſame Writ ſo delivered of Record, be not duly Returned before them at the day of the Return thereof; or that any other Default or Negligence hath been uſed or had, in the not well ſerving and Executing of the ſaid Writ, that then the Juſtices of the ſaid Court ſhall and may by Authority of this Act, Aſſeſs ſuch Amerciament upon the ſaid Sheriff or other Officer in whom ſuch Default ſhall appear, as to the diſcretion of the ſaid Juſtices ſhall be thought meet and convenient; which Amerciament ſo Aſſeſſed, ſhall be Eſtreated into the Court of Exchequer, as other Amerciaments have been uſed.

3. 'And be it further Enacted by the Authority aforeſaid, That the Sheriff or other Officer to whom ſuch Writ of *Excommunicato Capiendo*, or other Proceſs by virtue of this Act, ſhall be directed, ſhall not in any wiſe be compelled to bring the Body of ſuch perſon or perſons, as ſhall be named in the ſaid Writ or Proceſs, into the ſaid Court of the *King's-Bench* at the day of the Return thereof; (2.) But ſhall only Return the ſame Writ and Proceſs thither, with Declaration briefly how and in what manner he hath ſerved and Executed the ſame, to the intent that thereupon the ſaid Juſtices may

'then further therein proceed, according to the Te-
'nour and Effect of this present Act.

4. 'And if the said Sheriff or other Officer to
'whom the Execution of the said Writ shall so ap-
'pertain, do or shall Return, that the party or parties
'named in the said Writ, cannot be found within his
'Bailiwick, that then the said Justices of the *King's*
'*Bench* for the time being, upon every such Return,
'shall Award one Writ of *Capias* against the said per-
'son or persons named in the said Writ of *Excom-*
'*municato Capiendo*; (2.) Returnable in the same
'Court in the Term-time, two months at least next
'after the *Teste* thereof; (3.) With a Proclamation
'to be contained within the said Writ of *Capias*, that
'the Sheriff or other Officers, to whom the said Writ
'shall be directed, in the full County-Court, or else
'at the General Assises and Gaol-delivery to be holden
'before within the said County, or at a Quarter
'Sessions to be holden before the Justices of the Peace
'within the said County, shall make open Proclama-
'tion ten daies at the least before the Return, that
'the party or parties named in the said Writ, shall
'within six daies next after such Proclamation, yield
'his or their Body or Bodies to the Prison of the said
'Sheriff or other such Officer, there to Remain as
'a Prisoner, according to the Tenour and Effect of
'the first Writ of *Excommunicato Capiendo*, upon pain
'of forfeiture of ten pounds: (4.) And then
'upon after such Proclamation had, and the said
'daies past and expired, then the said Sheriff or
'other Officer, to whom such Writ of *Capias* shall be
'directed, shall make Return of the same Writ
'*Capias* into the said Court of the *King's-Bench*, of
'at he hath done in the Execution thereof, and
'ther the party named in the said Writ, hath
'ed his Body to Prison or not.

'And if upon the Return of the said sheriff, it shall
'appear, that the party or parties named in the said
'W

'Writ of *Capias*, or any of them, have not yielded their 'Bodies to the Goal and, priſon of the ſaid ſheriff, or 'other officer, according to the Effect of the ſame pro-'clamation; that then every ſuch perſon that ſo ſhall 'make default, ſhall for every ſuch default forfeit to 'the Queens Highneſs, Her Heirs and Succeſſors ten 'pounds, (2) Which ſhall likewiſe be Eſtreated by 'the ſaid Juſtices into the ſaid Court of Exchequer, 'in ſuch manner and form as fines and Amerciaments 'there taxed and aſſeſſed, are Uſed to be.

6. 'And thereupon the ſaid Juſtices of the *Kings-Bench* ſhall alſo award forth another Writ 'of *Capias* againſt the ſaid perſon or perſons that ſo 'ſhall be Returned to have made default, with ſuch 'like Proclamation as was contained in the firſt *Capias* 'and a pain of twenty pounds, to be mentioned in the 'ſaid ſecond Writ and Proclamation: (2) And the 'Sheriff or other officer, to whom the ſaid ſecond Writ, 'of *Capias*, ſhall be ſo directed, ſhall ſerve and Execute 'the ſaid Writ, in ſuch like manner and form, as 'before is Expreſſed for the ſerving and Executing 'of the ſaid firſt Writ of *Capias*. (3.) And if the 'Sheriff or other Officer ſhall Return upon the ſaid 'ſecond *Capias*, that he hath made the proclamation 'according to the tenour & Effect of the ſame Writ, & 'that the party hath not yielded his body to priſon 'according to the tenor of the ſaid proclamation; that 'then the ſaid party that ſo ſhall make default, ſhall 'for ſuch his Contempt and default, forfeit to the 'Queens Highneſs, Her Heirs and Succeſſors, the Sum 'of twenty pounds; (4.) Which ſaid Sum of twenty 'pounds, the ſaid Juſtices of the *King's-Bench* for the 'time being, ſhall likewiſe cauſe to be Eſtreated into 'the ſaid Court of Exchequer, in manner and form 'aforeſaid.

7. 'And then the ſaid Juſtices ſhall likewiſe Award 'forth one other Writ of *Capias* againſt the ſaid par-'ty, with ſuch Proclamation and pain of forfeiture, as

'was contained in the ſaid ſecond Writ of *Capias*, (2
'and the Sheriff or other Officer to whom the ſai
'Third Writ of *Capias* ſhall be ſo directed, ſha
'ſerve and Execute the ſaid Writ of *Capias*,
'ſuch like manner and form as before in this Act
'expreſſed and declared, for the ſerving and Exec
'ting of the ſaid firſt and ſecond Writs of *Capia*
'(3.) And if the Sheriff or other Officer to whom t
'Execution of the ſaid third Writ ſhall appertain, d
'make Return of the ſaid third Writ of *Capias*, th
'the party upon ſuch Proclamation, hath not yielde
'his Body to Priſon, according to the Tenour there
'of, that then every ſuch party for every ſuch co
'tempt and default, ſhall likewiſe forfeit to th
'Queen's Majeſty, Her Heirs and Succeſſors, othe
'twenty pounds: (4.) Which Sum of twenty poun
'ſhall likewiſe be Eſtreated into the ſaid Court o
'the Exchequer, in manner and form aforeſaid
'(5.) And thereupon the ſaid Juſtices of the *King's*
'*Bench* ſhall likewiſe Award forth one Writ of *Capi*
'againſt the ſaid party, with like Proclamation, an
'like pain of forfeiture of twenty pound: (6.) An
'that alſo the ſaid Juſtices ſhall have Authority b
'this Act, infinitely to Award ſuch Proceſs of *Ca*
'*pias*, with ſuch like Proclamation and pain of for
'feiture of 20 *l.* as is before Limited, againſt th
'ſaid party, that ſo ſhall make default in yielding o
'his Body to the Priſon of the Sheriff, until ſuch tim
'as by Return of ſome of the ſaid Writs before the
'ſaid Juſtices, it ſhall and may appear, that the ſaid
'party hath yielded himſelf to the Cuſtody of the
'ſaid Sheriff, or other Officer, according to the Te-
'nour of the ſaid Proclamation: (7.) And that the
'party upon every default and contempt by him
'made againſt the Proclamation of any of the ſaid
'Writs ſo infinitely to be Awarded againſt him,
'incur like pain and forfeiture of 20 *l.* which
'likewiſe he Eſtreated in manner and form
'ſaid. 8. 'And

8. 'And be it further Enacted by the Authority aforesaid, That when any person or persons shall yield his or their Body or Bodies to the hands of the Sheriff, or other Officer, upon any of the said Writs of *Capias*, that then the same party or parties that shall so yield themselves, shall Remain in the Prison and Custody of the said Sheriff or other Officer, without Bail, Baston or Mainprise, in such like manner and form, to all intents and purposes, as he or they should or ought to have done, if he or they had been apprehended and taken upon the said Writ of *Excommunicato Capiendo*.

9. 'And be it further Enacted by the Authority aforesaid, That if any Sheriff or other Officer, by whom the said Writ of *Capias*, or any of them shall be Returned as is aforesaid, do make an untrue Return upon any the said Writs, that the party named in the said Writ, hath not yielded his Body upon the said Proclamations, or any of them, where indeed the party did yield himself according to the Effect of the same, that then every such Sheriff or other Officer, for every such false and untrue Return, shall forfeit to the party grieved, and damnified by the said Return, the Sum of 40 *l.* (2.) For the which Sum of 40 *l.* the said party grieved shall have his Recovery and due Remedy by Action of Debt, Bill, Plaint, or Information, in any of the Queens Courts of Record, in which Action, Bill, Plaint, or Information, no Essoign, Protection or Wager of Law shall be admitted or allowed for the party Defendant.

10. 'Saving and Reserving to all Archbishops and Bishops, and all others having Authority to certifie any person Excommunicated, and like Authority to accept and receive the submission and satisfaction of the said person so Excommunicated; in manner and form heretofore used; (2.) And him to Absolve and Release, and the same to signifie, as

'heretofore it hath been accuſtomed, to the Queen
'Majeſty, Her Heirs and Succeſſors, into the High
'Court of Chancery; (3.) And thereupon to have
'ſuch Writs for the Deliverance of the ſaid perſon
'ſo Abſolved and Releaſed from the Sheriff's Cuſto-
'dy or Priſon, as heretofore they, or any of them had
'or of right ought, or might have had; any thing in
'this preſent Statute ſpecified or contained to the
'contrary hereof in any wiſe notwithſtanding.

11. 'Provided alwaies, That in *Wales* the Coun-
'ties Palatines of *Lancaſter*, *Cheſter*, *Durham*, and *Ely*,
'and in the Cinque-Ports, being Juriſdictions and
'places Exempt, where the Queen's Majeſty's Writ
'does not run, and proceſs of *Capias*, from thence
'not Returnable into the ſaid Court of the *King's*
'*Bench*, after any *ſignificavit*, being of Record in the
'ſaid Court of *Chancery*; the Tenour of ſuch *ſignifica-*
'*vit* by *Mittimus* ſhall be ſent to ſuch of the Head Of-
'ficers of the ſaid Country of *Wales*, Counties Pala-
'tines, and places Exempt, within whoſe Office
'Charge or Juriſdiction, the Offenders ſhall be Re-
'ſiant; that is to ſay, to the Chancellor or Chamber-
'lain for the ſaid County Palatine of *Lancaſter* and
'*Cheſter*, and for the Cinque-Ports, to the Lord War-
'den of the ſame, and for *Wales* and *Ely*, and the Coun-
'ty Palatine of *Durham*, to the Chief Juſtice or Juſti-
'ces there: (2.) And thereupon every of the ſaid
'Juſtices and Officers, to whom ſuch Tenour of *Sig-*
'*nificavit* with *Mittimus* ſhall be directed and deliver-
'ed, ſhall, by virtue of this Eſtatute, have Power & Au-
'thority, to make like Proceſs to the Inferiour Offic-
'and Officers, to whom the Execution of Proceſs
'there doth appertain, Returnable before the Juſtices
'there, at their next Seſſions or Courts; two Months
'at the leaſt after the *Teſte* of every ſuch Proceſs.
'(3.) So alwaies as in every degree they ſhall pro-
'ceed in their Seſſions and Courts againſt the Offen-
'ders, as the Juſtices of the ſaid Court of *King's*
'*Bench*

Such are Limited by the Tenour of this Act, in Term-times to do and Execute.

12. 'Provided alſo, and be it Enacted, That any perſon at the time of any Proceſs of *Capias* aforementioned, Awarded, being in Priſon, or out of this Realm in the parts beyond the Sea, or within Age, or of *non ſanæ memoriæ*, or Woman Covert, ſhall not incur any of the pains or forfeitures aforementioned, which ſhall grow by any Return or Default happening, during ſuch time of Nonage, Impriſonment, being beyond the Sea, or *non ſanæ memoriæ*: (2.) And that by virtue of this Eſtatute, the party grieved may plead every ſuch Cauſe or matter in Bar of, and upon the Diſtreſs, or other Proceſs that ſhall be made for Levying of any of the ſaid pains, or forfeitures.

13. 'And if that the Offender againſt whom any ſuch Writ of *Excommunicato Capiendo* ſhall be Awarded, ſhall not in the ſame Writ of *Excommunicato Capiendo*, have a ſufficient and lawful Addition according to the form of the Statute of *primo* of *Henry* the Fifth, in caſes of certain Suits, whereupon Proceſs of Exigent are to be Awarded: (2.) Or if in the *Significavit* it be not contained, that the Excommunication doth proceed upon ſome cauſe or contempt of ſome Original matter of Hereſie, or Refuſing to have his or their child Baptized, or to Receive the holy Communion as it is now commonly uſed to be Received in the Church of *England*, or to come to Divine Service now commonly uſed in the ſaid Church of *England*, or Errour in matters of Religion, or doctrine now Received and Allowed in the ſaid Church of *England*, Incontinency, Uſury Simony, Perjury in the Eccleſiaſtical Court, or Idolatry; (3.) That then all and every pains and forfeitures limited againſt ſuch perſons Excommunicate by this ſtatute by Reaſon of ſuch Writ of *Excommunicato Capiendo*, wanting ſufficient Addition, or of

'such *Significavit*, wanting all the Causes afore men-
'tioned, shall be utterly void in Law; (4.) and by
'way of Plea to be allowed to the party grieved.

14. 'And if the Addition shall be with a *Nuper* o
'the place. Then in every such case, at the Awarding
'of the first *Capias* with Proclamation according to
'the form mentioned, one Writ of Proclamation
'(without any pain expressed) shall be Awarded into
'the County, where the offender shall be most com-
'monly Resiant at the time of the Awarding of the
'said first *Capias* with pain, in the same Writ of Pro-
'clamation, to be Returnable the day of the Return
'of the said first *Capias*, with pain and Proclamation
'thereupon at some one such time and Court, as is
'Prescribed for the Proclamation upon the said first
'*Capias* with pain: (2.) And if such Proclamation be
'not made in the County where the offender shall be
'most commonly Resiant, in such cases of Addition of
'*Nuper*, That then such offendor shall sustain no pain
'or forfeitures by vertue of this Statute, for not
'yielding his or her body, according to the Tenour
'aforementioned; any thing before specifyed, and to
'the Contrary hereof in any wise Nothwithstanding.

The Comment.

With a Discourse of the Nature of Excommunication, *and how to* prevent *or* take off *the Writ* De Excommunicato Capiendo.

THough Excommunications pretend a Title *Jure Divino*, as an Institution of Christ, and therefore his *Sacred Name* is therein made use of, and several other *Spiritual Phrases* purporting that the same, and all proceedings thereunto, are by *his* Authority; yet they being so commonly thundered out by persons who have immediately no Authority from our Lord, or his Word, to manage them; and for such *trivial Crimes* as no Law of God hath ordered them

them againſt, and in ſuch a *Light and precipitant* manner, as no part of holy Scripture warranteth: The meaner ſort of men do therefore look upon them rather as *Excommunings*, or a ſort of Civil puniſhment, like that in uſe among the *Romans*, *Interdico tibi aquâ & igni*, than one of the ſolemn Inſtitutions of God. And therefore waving any diſcourſe of what Spiritual Influence or Effect may be dreaded from the ſame in our daies, which we hope are wiſe enough not to be *Bug-Bear'd* with that Maxim of the Canoniſts *Excommunicatio ſive Juſta, ſive Injuſta eſt timenda*; *A Church-Curſe, be it Juſt, or Unjuſt, is to be feared.* All that we ſhall ſpeak to is matter *of Law*, for ſo it is that there are *Legal Bars* and puniſhments formed by our Temporal Laws, as long as the Legiſlative Power ſhall not be at leiſure to conſider of them, and (if they find it requiſite) Repeal them.) For

1. A perſon *Excommunicated* is forthwith *diſabled to Sue* in any of His Majeſties Courts; not that thereby he loſes his Right for ever, but the Excommunication may be pleaded in *Abatement* of his preſent Action, till the ſame is taken off by an *Abſolution*. Yet note, That whoſoever is Inſtrumental in procuring, ſoliciting, decreeing or pronouncing the Excommunication, ſhall never be allowed to plead it; nor ſhall it be pleaded, unleſs the Excommunication be ſignified by the *Biſhop himſelf*; for the Court will receive no Certificate from any to whom they cannot write to Abſolve the perſon, if they find cauſe.

2. Likewiſe, though a perſon Excommunicated may be appointed an *Executor*, and is capable of having a *Legacy* given him, yet ſo long as he ſtands Excommunicated, he is not to be allowed to *prove the Will*, nor *Sue for his Legacy* in the Spiritual Court. But note, whereas ſome ſay a man Excommunicated cannot *Marry*; 'tis Nonſenſe, for Marriage is *de Jure Naturali*; and alike abſurd it is for any to pretend, that ſuch a perſon cannot give his *Suffrage* in any

Election

Election; as for Example of *Parliament-men*, for the same is an idle dream; the Law allows him a Voice, so long as he hath a Free-hold of forty Shillings per *Annum*, though he were under forty Curses.

3. If a person (justly or unjustly) Excommunicated, continue so by the space of forty daies then by the Common Law, the Bishop certifying the same into Chancery, (which is called a *Significavit*) there shall Issue forth a Writ from thence to the Sheriff of the County where the party lives, to Imprison him without *Bail* or *Mainprize*, till he hath made satisfaction to Holy Church.

This is called a Writ *de Excommunicato Capiendo*, and such Imprisonment of a person Excommunicated by a Civil Sanction, is not practised *in any Nation in the world*, but ours, and if it had here too been *Buried* with its Brother *de Hæretico Comburendo*, I believe it would have had *few Tears* at its Funeral. But at Common Law the same Writ being not Returnable in any Court, the Sheriffs took their own time, and used their discretion in Executing it; to inforce which this Statute was made, whereby it is Enacted;

1. That the said Writ shall be Returnable in the *King's-Bench*, yet the Sheriff need not bring thither the Body.

2. If the Sheriff Return *Non est Inventus*, a *Capias* shall be Awarded with Proclamation, to come in within six daies; if the party do not, he forfeits 10 *l.* and thenceforwards *Capias* after *Capias*, and 20 *l.* forfeited on each.

3. But note, there are two Cases in which though a man stands out never so many *Proclamations*, he shall forfeit nothing. And they two are these.

1. Where the party against whom the Writ *De Excommunicato Capiendo* is Awarded, hath not therein a sufficient and lawful *Addition*; That is (saith *Cowel*) *A Title over and above his Christian and Sirname, shewing his State, Degree, Trade, Occupation or Mystery* (as Lord,

…d, Knight, Gentleman, Yeoman, Clothier, and the … *and the Hamlet, Town, Pariſh, and County* where …, or lately was converſant and dwelling. And if …e with a *Nuper* [late of ſuch a place] then you ſee …re muſt be made out one *Capias* without any …ality.

2. Where it is not expreſſed in the Biſhops Cer…ficate, that the Cauſe for which the party was origi…lly Cited into the Spiritual Court, was for one of …ſe 10 *Cauſes* following, *viz.* 1. *Hereſie*; 2. Refuſing …have Children Baptized; 3. Refuſing to Receive …e *Communion*; 4. Refuſing to come to *Divine Ser…ce*; 5. *Errour* in Religion or Doctrine; 6. *Inconti…ency*; 7. *Uſury*; 8. *Simony*; 9. *Perjury* in the Ec…ſiaſtical Court; or 10. *Idolatry*.

To know whether there be ſuch cauſe expreſſed, …u may have *a Copy of the Significavit* at the *Curſitors* …fice in *Chancery-Lane*.

Then, in either of theſe caſes, all pains and for…itures limited by this Statute by reaſon of ſuch …rit of *Excom. Cap.* wanting ſuch an *Addition*, or *Sig…ficavit*, wanting all the cauſes aforeſaid, ſhall be …terly *void* in Law, and by way of Plea to be allow…d to the party grieved.

Touching the Authority of the Courts called *Spi…ual* or *Eccleſiaſtick*, whether they have truly any …all by our preſent Laws, I ſhall not here debate; …ey that have a mind to hear what is to be ſaid on …at Theme, may read Mr. *Hickeringil*'s Book of *…ked Truth*, or Mr. *Henry Care*'s Book written in the …ar 1664. entituled, *A True Guide for all perſons con…rned in Eccleſiaſtical Courts*; neither of which I ever …t ſaw ſufficiently *Anſwered*; yet ſtill ſince moſt cer…in it is, that ſuch Courts do proceed and *Act*, we …ill ſuppoſe them to have ſome Power, and only in…rm our Reader of the courſe of their practice, as it …uſed at this day, and his beſt courſe to defend him…lf.

You

You muſt note, That perſons are uſually Excommunicated upon *Contempt* or *Contumacy*, which may be,

1. *If the party being duly Cited, denieth, or Omitteth to appear:* For if he be not perſonally ſummoned, he needs not appear the firſt time; but then their way is to Cite him by a Writ called *Viis & Modis*, ſet up at the *Doors of his Houſe*, or at the *Church-Doors* Citing him at a certain day to appear to Anſwer, &c. But (being perſonally Cited) if he doth not appear the *firſt* time, or whether he be or no, if he doth not appear the *ſecond* time, he is *Excommunicated for Contempt.* If he be Cited generally, the Law is, *That he ſhall appear the third day after the Service of the Citation.* The Law alſo is, that *If he will give the Apparitor 6 d. he muſt bring him the full and true Copy of the Citation.* If a day of Appearance be mentioned, and the ſame be not at leaſt the third day from the Citation; or if he hath before witneſſes given the Apparitor *6 d.* to bring him a full and true Copy of the Citation, and he doth not, I conceive, he needs not appear, but liſten what they do; and if they decree him *Excommunicated*, he may *Appeal* within 15 daies, and bring from the *Superiour Court*, an *Inhibition* to ſtop their proceedings againſt him. And further, the Rule in that Law is, *Totus dies debetur Delinquenti.* It is enough for a perſon to appear *any hour* of the day (provided it be a *Court-hour*) wherein he is Cited to appear; ſo as though he be *called* before he comes, yet if he appeareth that day, he ſhall be diſcharged, or he may *Appeal.*

2. When he appeareth, he ſhall demand his *Charge*, which is either by a *Preſentment* from *Church-Wardens*, or by a *Libel*, or *Articles*, which are Exhibited by a *Promoter.* Be it which it will, he ſhall demand a *Copy*; if it be *denied* or *delayed*, he may bring, if he will, a *Prohibition* from the *King's Court at Weſtminſter*, forbidding them to proceed in that Cauſe,

ſe, till they have given a full and true Copy of Charge, according to the Statute of 2 *Hen.* 5. c. 3.

3. If he *appeareth in perſon*, he ought to have his harge the firſt Court-day; if he appeareth *by a roctor*, they will uſually (to get the Proctor *more* ees) give to the *ſecond* Court-day, to bring in the *ill* or *Articles*.

4. If they deliver him not his Charge the ſecond Court-day, he may *Appeal*, if upon his demand the Judge will not diſmiſs him; or he may, if he will, ring his *Prohibition*, for want of *Articles*, and ſtop heir further proceedings.

5. If the proceedings be upon a *Promotion*, and the *Promoter* hath Imployed a *Proctor* in the Caſe, the party accuſed muſt know, that no *Proctor* can be admitted without a *Proxy*, that is, Letters *Procuratory* under the *Promoter's Hand and Seal*, authorizing him to act for him in the Caſe; and when he hath that, there muſt be an *Act* Entred in *Court* to Admit ſuch a perſon Proctor in the Caſe. The party charged may go or ſend to the *Regiſter*, and demand a *ſight of* with *thoſe*; the Reaſon in Law is this, becauſe *any Proctor is liable to the Parties Action*, if he moleſteth any perſon in the name of another, without *Authority* from him. And ſecondly, *If there be no Act of Court* admitting him as a *Proctor*, though the party accuſed be Conquerour in the caſe, yet *he cannot Recover Coſts*, becauſe there is no *Legal Adverſary*, againſt whom they can be Recovered.

6. According to the *Statute-Law*, *Every Informer*, if overthrown, ſhall pay Charges. According to the *Civil* and *Canon Law*, none ought to be Admitted as a *Voluntary Promoter*, till he hath given Security to pay the Charges, If overthrown. The Party Accuſed therefore ſhall before he anſwereth the *Articles*, demand this; If it be denied by the Judge, he may Appeal to the Superiour Court. It is alſo worth the

perſons

persons Enquiry who is Accused, to be well advis'd whether the *Promoter* in the *Ecclesiastical Courts*, is not obliged to all those things, that an Informer in the Secular Courts is tied to, by the Statutes 31 Eliz. 5. 18. *Eliz.* 5. 21. *Jac.* 4. The Reason is, because the Statutes say, *Informers Upon any Penal Statutes*, and commonly Promoters in the *Ecclesiastical Courts*, for such and such things are done contrary to the *Statutes of this Realm, as well as contrary* to the *Canons*: now what things the Statutes, which also name *Promoters*, Require of such *Informers* and *Promotors*, the Statutes do declare.

7. When the Party Accused hath a Copy of his *Libel*, let him demand time to Answer; If the Judge denies him time (at least till the next Court-day) let him Appeal; Having due time granted, in the mean time let him duly consider the *matter and form of his Libel*. As to which let him amongst other things observe these that follow.

1. Whether the matters he be Charged with, belong to the Cognisance of the *Ecclesiastical Court*? If Lawyers tell him no, let that be his Answer, and let him hasten to bring his Prohibition, which Lies in all such Causes.

2. Whether they have put into the Libel the *Promoters Petition for Right and Justice* to be done him; it is oftimes left out. It is a Rule in their Law, *Libellus est ipso Jure nullus, ubi nihil Petitur*. If he finds that this is wanting, let his Answer only be That the Libel is in Law utterly voyd, and Insufficient, and desire to be dismissed: If the Judg Refuseth to dismiss him, let him Appeal.

3. Let him also Observe, whether he be in the Articles laid to be *one of the Diocess*, or a Parishioner of such a Parish, for if it be not laid, it can never be *proved*, and so the *Promoter* must fail in his Suit; for what is not laid, cannot be proved: *Quicquid deponitur Extra Articulum, deponitur Extra Legem*, is a Rule in the

Law

If he be ſaid to be a Pariſhioner of ſuch a place, him ſuch a dioceſs, let him not in his Anſwer Con- it but ſay, *He cannot determine the Bounds of dioceſſes parifhes, but for that he Referreth himſelf to the Law.*

4. Let him alſo obſerve, if the things he be Char- to have done, or omitted, be within the com- of a year, and whether there hath been ſince *no of Grace or Oblivion, which hath pardoned them; and ther they be not ſuch things as he hath been puniſhed for, ſuch things as the Statute-Law hath Limited the proſe- ion of to a leſs time than a year*: For if any of theſe ngs be, they may be given in anſwer to avoid ei- r the whole, or any part of the Charge. If the dge will not accept the *Anſwer*, the party may out a *Prohibition* and ſtop them.

5. Let him alſo obſerve, *whether he be charged cer- ly or particularly*, as to *time* and *place*, or only *ge- ally* and *incertainty*; if he be charged only generally, for the moſt part he is, in Church-Wardens Pre- ments, not mentioning *time* and *place*; or incer- ly with *Or's*, that he did not come to his Pariſh- urch, ſuch and ſuch months and daies, or was ab- in ſome one, or more, or moſt of them: Let Anſwer be, that this Charge is *void in Law*, for *generality or incertainty of it*. If the Judge will Receive his Anſwer, let him *Appeal*; for the Law *England* alloweth no ſuch Charges, *from which can Diſcharge*, or where the Crime is not fixed to a ain time. But it may be, in this Caſe, a *Prohibiti-* will be his beſt Remedy.

6. Let him obſerve, whether he be charged only pon *Statute-Law*, or upon *Canons*; if upon *Canons*, him in his Anſwer modeſtly refer himſelf to *Per- Learned in the Statute-Laws*, whether any ſuch *Ca-* were ever *Enacted, Ratified, Allowed, or Confirm- by Parliament, or by the Eſtabliſhed Laws of the Land*, they ſtood in the year 1639. and if not, whether be not made void by the Statute 13. *Car.* 2.

10. When

10. When he hath given his Answer, which must be subscribed by his own hand, it is usual for the *Adverse Proctor* to demand a time to prove his Articles, for which the Judge at his pleasure granteth two, three, four, or six Court-daies (usually but two) let him also at the same time move, that he may have liberty within that time also, to produce any Witnesses for his Defence; if it be denied, let him Appeal.

11. Let him observe, what time the Judge setteth his Adversary to produce his Witnesses in Court, and whom he names for Witnesses for him. Let him also desire a time to be set in Court for him to produce his *Witnesses*, and be careful to bring them at that time, for they must all be sworn in the Court, then Examined privately by the Register. Unless the Adversary desireth a *Commission to Examine* Witnesses (which is not often done, because it is much more Chargeable) in that Case, there are no Witnesses to the Court produced and Sworn, but before the Commissioners.

12. If the *party Defendant will*, he may deliver to the Register *Interrogatories*, upon which the Register shall Cross-Examine his Adversary's Witnesses. But he must be very wary as to this, for he shall not afterward *Except* against any of his *Adversaries Witnesses* whom he hath Cross-Examined, and made Witnesses for himself.

13. Let him *Advise his own Witnesses to be very carefull that the Register setteth down what they say, in their own words, that under the pretence of putting them into a due phrase, their whole sense be not altered.*

14. When the *time Probatory*, set at first by the Judge, is expired, let him desire of the Judge, *Prolitation.* If the Judge will grant longer time to prove, let him desire the Advantage of the same time also, to bring more Witnesses for himself, which he may, or may not, make use of as he pleases. If he

the Term given for proof be Expired, let him desire *Publication*, & Liberty to take out a *Copy of the depositions.*

15. When he hath got a *Copy*, let him diligently observe, if he can prove any thing Contrary to what the Witnesses, or any of them have sworn; if he can, let him at the next Court-day, offer a paper of *general & Particular Exceptions*, shewing the Particulars which he Excepteth against in their *depositions* severally, as well as his *general Exceptions* against them all. Let him desire a time to bring in witnes, to prove his *Exceptions.* If the Judge refuseth to admit his *Exception*, or to give him due time to prove them, he may again Appeal.

16 When once the *Promoter* hath Allowed to have *Publication*, he may again move for time, to Invalidate the proof of the *Exceptions*, but not to fortify his first proof. If any Liberty of that Nature be desired, the *Defendant* may *Appeal*; for unless in a case for the King after Publication, no new Witnesses can be produced.

17. When the party against whom the *Promotion* is, peruseth the *deposition*, let him strictly observe, whether the particulars he is charged with be proved by *two Witnesses*; for it is a Rule in their Law, *Vox Unius est Vox Nullius*, and if the Judge will admit the thing proved *by one Witness* a Prohibition Lyes: for the Kings Judges, will not only see, that those Courts shall keep to matters truly belonging to their Jurisdiction; but also that in the prosecution of them, they shall keep to the *Received Rules* of their own Law, in those main points of proof, *&c.*

18. It is an usual thing upon presentments by Church-Wardens, when the party presented calls for proof of the presentment, to tell them, That the *Church-Wardens presentment is a Conviction*, they being sworn Officers. But this is contrary to the Law of *England*, which knoweth no *presentment by Officers ex Officio* to be a *Conviction. If Grand Juries* at *Assizes* and *Sessions* do present, this is no *Conviction*, but the persons must after this be *Indicted*, and *proof* made by Witnesses. If there-

therefore the Ecclesiastical Court insists on this, t
person may appeal; or (which it may be is better) t
may have a *prohibition* from the *Kings Court* at *Westmin*
as some greater Lawyers think.

19. When the *time for proof* is Expired, and Pub
cation made, and *Exceptions* given in and proved, a
Publication of those proofs also made; either par
may move for a time to be set to Conclude, and
give the Judge *Information* of the whole state a
merit of the Case; and also to give Sentence in it.

20. At the day set, the party Accused, or Promot
against, may Appear, and shew to the Judge t
whole state of the Case, and plead it himself; or,
he will, by an *Advocate*, if any be at hand; or fo
ought I know, if there be none by, *Attorney*, or *Counse*
at *Common-Law*; after which the Judge will appoi
upon desire a day to give sentence.

21. At that day the Party must have a form of a
Absolutory Sentence, ready to tender to the Judge, if t
Judge gives Sentence against him he may appe
within 15 days, by vertue of the statute, 24 *Hen.* 8. 1

22. All along the *Prosecution*, the person again
whom the *Prosecution is*, shall do well after every Cour
to get the *Acts of the Courts in his Case*, *under the R*
gisters hand, and to keep them by him carefully. S
much I thought fit to add here for the Readers In
struction, how to behave and Conduct himself whe
Troubled in *those Courts*, because 'tis a practice ver
little understood, by means whereof greedy *Proctor*
Soliciters and other *ill men* frequently make a prey o
honest people therein concerned.

I shall now Recount the *ways and means* how to ge
off from the Writ *De Excommunicato Capiendo*—
we told you before, no *Bail* would be accepted, no
writ an *Habeas Corpus* avail you, (unless you have
mind only to change the Prison) nor does a *Prohibitio*
or *Homine Replegiando* Lie. But the Several ways to
help (according as the Case happens) are as followeth

1. *If the Party impriſoned hath brought a* PROHIBI-TION, *by which the Eccleſiaſtical Court hath been commanded to proceed no further, and to abſolve the Perſon, if excommunicated, and the Judge hath diſobeyed the Writ, and ſignified and procured the Party to be impriſoned, the Party that is impriſoned* at any time in Term, upon a *Motion*, ſhall have firſt an *Attachment* againſt the Judge, and then a Writ of *Superſedeas* to the Sheriff, to deliver the Priſoner to follow the *Attachment*, without any Submiſſion to the Biſhop at all, or any Satisfaction. Such Writ may be found in the Regiſter of *Original Writs*, pag. 66. Nay if the Attachment be granted, and the Perſon be Impriſoned, or a Writ iſſued commanding him to be taken, and the Term be paſt before the *Attachment* can be ſerved, the Regiſter tell us, that he ſhall have the ſame Writ during the Vacation out of Chancery: Nay, it is the Opinion of men ſkilled in the Law, that he ſhall have ſuch *Superſedeas*, upon *Affidavit* made, that the proceedings are contrary to a Prohibition ſerved upon the Judge, though no ſuch Attachment be taken out.

2. *If the Party impriſoned, or againſt whom the Writ is taken him, though he be not taken, hath appealed according to the Statute,* 24 Hen. 8. 12. *If he bringeth into the Court of* Chancery *an Authentick copy of his Appeal, he ſhall have a Writ of* Superſedeas *to ſtop the Sheriff from apprehending him, or to deliver him if he be apprehended,* only this muſt be within a Year after his Appeal, that it may appear to the Court, he hath not deſerted his Appeal; you may find forms of ſuch a *Superſedeas* alſo in the *Regiſter of Original Writs*; both theſe are found-ed upon excellent Reaſon. The Law of *England* will not ſuffer Eccleſiaſtical Judges, either to invade their Right, or to exalt themſelves againſt their Authority, nor yet ſuffer *Inferiour Eccleſiaſtical Courts* to invade the *Right, Power*, and *Authority of Superiour Courts* in their own Order.

3. *If a Perſon be ſued in the Eccleſiaſtical Courts for a matter*

matter not within their Jurisdiction, and they have caus him upon contempt, in not appearing or not obeying th Sentence: Upon a ſuggeſtion to the Kings Courts, it appear to them, that the Original matter was no cognoſcible in the Eccleſiaſtical Courts, they will ſu perſede the Proceedings, and order the impriſone Perſon to be diſcharged.

4. *If the impriſoned Perſon, or he againſt whom t Writ is out, though he be not taken, bring a Copy of the Bi ſhops* Significavit *into the Courts at* Weſtminſter, an make it appear to the Judges there, that the Cauſe o Excommunication is not therein expreſſed, togethe with the day when it was pronounced, if he be n ſaid to be excommunicated *Majori Excommunication* if it be not ſigned by the Biſhop, or ſaid to be don *Authoritate noſtra ordinaria: if the Party excommunic ted be not expreſſed by name,* the Court will deliver th perſon. Dr. *Cozens* mentions three of theſe Caſes and the Reader alſo may find them in the *Regiſter of Writs.* The firſt he ſaith he cannot find in the *Regiſter,* viz. *That the Articles or matter of the Libel m be expreſſed,* nor indeed do I find it there; but it is ſeveral Reports. The Reaſons are, 1. Becauſe th Law will not ſuffer men to be impriſoned for ever light Offence, (this *De Cozens* gives. 2. Becauſe th Kings Courts can receive *Significavits* from none b the perſon to whom (if need be) they may write diſcharge the Priſoner: Nor will the Court ſuffer perſon to be excommunicated, and lie in Priſon f a Crime which the Eccleſiaſtical Court hath no ju ment in; nor yet unleſs it appeareth to the Court hath ſtood Forty days excommunicated. Again ho toſore whole Cities and Communities have been e communicated, therefore the perſon muſt be e preſſed by name, or he ſhall not lie there.

5. Let him procure the Copy of the Writ *de E communicato Capiendo* and obſerve, firſt, if it be Iſſued Term-time. 2. *If there were full Twenty days bet*

Teſt and Return. 3. *If it be made Returnable the Term.* 4. *If there be due Additions in it.* 5. *If it was delivered to the Sheriff, it were Entered upon Record in the* Kings-Bench, *and made Returnable into Court.* All theſe things are Required by the ſtatute 31 *Eliz.* 23; If any of theſe Errours be found, he ſhall have motion in the Kings Bench be diſcharged, and the Writ will be declared Illegall.

Laſtly, If he can be delivered by none of theſe Ways, he may at any Sealing in the *Chancery* whether it be in Term, or out of Term, upon a petition to, or motion before the L. Chancellor have the *Writ, de Cautione Admittenda,* granted him (in Caſe he hath before offered the Biſhop a Bond of 10 *l.* or 20 *l.* with Sureties *ſtare & parere mandatis Eccleſiæ in forma Juris*) when he hath it, let him by ſome Attorney, or Attorneys Clerk ſend it, and tender a Bond and Sufficient Sureties with it to the Biſhop, and demand the Diſcharge of the Priſoner: If it be not preſently done, let him certifie ſo much, and at the next Seal move for a ſecond Writ to the Biſhop; or (which it may be is more adviſeable) let him move for a ſecond Writ to the Sheriff, (the form of it is in the Regiſter.) In that the King commandeth the Sheriff to admoniſh the Biſhop to accept the *Caution,* & to deliver the *Priſoner,* and further commands him, that in caſe he doth it not in his preſence, the Sheriff ſhould do himſelf. If the Sheriff yields not Obedience; upon other Motion, he ought to have a Writ to the Coroners, commanding to take ſecurity of the Sheriff to appear at *Weſtminſter* ſuch a day, to ſhew reaſon why he hath contemned the Kings Writ, and further it commandeth the Coroners to take the Caution of the Priſoner, and to deliver him. The Reader may find all this in the Regiſter where are the Forms of all theſe Writs, and alſo in Dr. *Cozens Apology,* p. 1. c. 2. who being himſelf a *Judge* in the Eccleſiaſtical Courts, cannot be preſumed to have told us any thing

thing but what is *Law*, contrary to their own Interest.

It is true, the Bishop upon taking such *Cautionary Bonds*, doth ordinarily Insist upon the Person paying the Prosecutors Charges, but it is unreasonable, 1. Because he hath nothing to do but to Execute the Command of the Writ, which speaks not a word of Charges. 2. Because if the Charges be Legally due, the Promoter must have also a legal way to Recover them; if not, it is Extortion for the Ecclesiastical Judge to Exact them. 3. Because it is no sufficient Return to the King's Writ, which mentioneth no such thing, to say, He could not discharge the Prisoner, because he would not pay the Promoters Charge.

But because the Legal Charges are small, usually the Prisoner for his Liberty will pay the Charges which are as follow.

	l.	*s.*
For the Adversary's, Proctor every Court-day until he was Excommunicated, and that day when the *Significavit* was decreed: For every day	00	01
For the Proctor's Procuratory Letter, Seal and Wax	00	01
For Certifying the Service of the Citation	00	00
For the Articles, if there were any	00	05
For an Act of Court, for every day	00	00
For the *Significavit*	00	05
For the *Significavit* to deliver the Prisoner	00	05
For the Excommunication and the Schedule	00	02
For the Writ *de Excommunicato Capiendo*, and the Charge of Entring it upon Record in the *King's-Bench* about	02	01

	l.	*s.*	*d.*
The buſineſs have proceeded no further than a Libel and Articles, this is all the Legal Charges; but if it hath proceeded further, there may be for the Copy of the Anſwer—	00	00	90
For every Witneſs Examined 1 *s.* and for the firſt ——— ——	00	01	06
For a Fee to the Proctor at Inform.	00	03	00
For a Definitive Sentence ——— ——	00	11	00
For the Advocate at the Sentence ——	00	10	00

But note, the Charges are *more* or *leſs*, as the Cauſe went further or leſſer way before the *Excommunication*.

But if the Biſhop will not take the *Caution*, and diſcharge you, you may have a ſecond *Writ* directed to the *High-Sheriff*, commanding him to go to the Biſhop, and require him to take the Caution, and to deliver the Priſoner, and requiring him to do it *himſelf*, if the Biſhop ſtill refuſe. And if the Sheriff do not do ſo, you may have a Writ to the ſame purpoſe directed to the *Coroner* to do it, as you may ſee in that Authentick Law-Book, *The Regiſter of Original Writs*, fol. 66, and 67. So careful were our Forefathers for the Liberty of the Subjects Perſons. And hereby it appears that the Biſhop is bound by Law to take the Caution, that is, *Fidejuſſory Caution*, I mean *Bond and Sureties*, and thereupon to abſolve the Perſon Excommunicated, though he will not take an *Eſtare mandatis Eccleſiæ*, *To obey the commands of holy Church*. As for what ſhall be accounted ſuch *ſufficient Caution*, the practice is for the Party and two Friends (for there muſt be *Two* Sureties) to be bound in a Bond of 10 *l.* (ſeldom more, or at moſt 20 *l.*) to the Biſhop, conditioned, That the Party ſhall obey the Commands of the Church, but ſuch Bond when entred into is but a *Formality*; for they

thing but what is *Law*, contrary to their own Interest.

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For the Articles, if there were any	00	05
For an Act of Court, for every day	00	00
For the *Significavit*	00	05
For the *Significavit* to deliver the Prisoner	00	05
For the Excommunication and the Schedule	00	02
For the Writ *de Excommunicato Capiendo*, and the Charge of Entring it upon Record in the *King's-Bench* about	01	01
	02	01

the buſineſs have proceeded no further than a Libel and Articles, this is all the Legal Charges; but if it hath proceeded further, there may be for the Copy of the Anſwer—	*l.* 00	*s.* 00	*d.* 90
For every Witneſs Examined 1 *s.* and for the firſt —— ——	00	01	06
For a Fee to the Proctor at Inform.—	00	03	00
For a Definitive Sentence —— ——	00	11	00
For the Advocate at the Sentence ——	00	10	00

But note, the Charges are *more* or *leſs*, as the Cauſe went further or leſſer way before the *Excommunication.*

But if the Biſhop will not take the *Caution*, and diſcharge you, you may have a ſecond *Writ* directed to the *High-Sheriff*, commanding him to go to the Biſhop, and require him to take the Caution, and to deliver the Priſoner, and requiring him to do it *himſelf*, if the Biſhop ſtill refuſe. And if the Sheriff do not do ſo, you may have a Writ to the ſame purpoſe directed to the *Coroner* to do it, as you may ſee in that Authentick Law-Book, *The Regiſter of Original Writs*, fol. 66, and 67. So careful were our Forefathers for the Liberty of the Subjects Perſons. And hereby it appears that the Biſhop is bound by Law to take ſuch Caution, that is, *Fide juſſory Caution*, I mean *Bond and Sureties*, and thereupon to abſolve the Perſon Excommunicated, though he will not take an Oath, *ſtare mandatis Eccleſiæ*, *To obey the commands of holy Church.* As for what ſhall be accounted ſuch *ſufficient Caution*, the practice is for the Party and two Friends (for there muſt be *Two* Sureties) to be bound in a Bond of 10 *l.* (ſeldom more, or at moſt 20 *l.*) to the Biſhop, conditioned, That the Party ſhall obey the Commands of the Church, but ſuch Bond when entred into is but a *Formality*; for they

are never put in Suit, and indeed signifie noth

Thus have we given our honeſt Countrey-men ſo few Directions how to act in this difficult and troubleſom Affair, being a Myſtery unknown to many common practiſers of the Law.

Note alſo, That by the Statute of *Car.* 1. *Ca.* 1 For taking away the high Commiſſion Court, ther is the following Clauſe.

'And be it alſo Enacted by the Authority aforeſ 'that no Archbiſhop, Biſhop, nor Viccar gener 'nor any Chancellor Official nor Commiſſary of a 'Archbiſhop Biſhop, or Viccar general, nor any O 'dinary whatſoever nor any other Spiritual or Ecc 'ſiaſtical Judge, Officer or Miniſter of Juſtice, e 'ſhall *Ex officio*, or at the Inſtance, or promotion 'any other perſon whatſoever urge, enforce, tende 'give, or miniſter unto any Church Warden Sidem 'or other perſon whatſoever any Corporal O 'whereby, he or ſhe ſhall or may be charged 'obliged to make any preſentment of any Crime 'offence, or to confeſs or to accuſe himſelf or her 'of any Crime, offence, delinquency, or miſdemean 'or any Neglect, matter or thing, whereby or 'reaſon whereof he or ſhe ſhall or may be liable, 'expoſed to any cenſure, pain, penalty, or puniſhm 'whatſoever, upon pain and penalty that every pe 'who ſhall offend contrary to this Statute ſhall for 'and pay Treble damages to every perſon the 'greived and the ſum of 100 *l.* to him or them 'ſhall firſt demand and ſue for the ſame.

And tho by the Statute 13 *Car.* 2. *Ca.* 12. pla this Statute is abrogated, yet this Clauſe is Excep and confirmed by an expreſs Proviſo of the ſa Act. And there are many precedents ſince His M ſties Reſtauration, where Church Wardens be proſecuted in the Spir. Court for not Swearin the Biſhops *Book of Articles* of Inquiry, have mo the *Kings-Bench* or common Pleas, and obtain

'prohibi

hibition to ſtop ſuch proceedings, as particularly the Caſe of one *Waters* of *Chicheſter* in the *Commo*

AND now coming to ſpeak of the Laws upon ich *Proteſtant Diſſenters* are commonly proſecuted threatned to be proſecuted, I muſt for the Rea- 's better underſtanding, diſtinguiſh them; for truth is, They are of *two* different Natures and ds.

1. Some *Statutes* which were wholly deſigned *a- ſt Papiſts*, and ought only to be Exerted againſt m, which yet ſome now would wreſt and diſtort, make them Serve as *Rods* wherewith to laſh diſ- ing Proteſtants for not coming to Church, Re- ving the Sacrament, *&c.*

2. The Laws that were indeed made againſt Pu- *Sectaries* (as they call them) or diſſenting Pro- ants.

I ſhall firſt breifly ſum up all the firſt Sort, how y and what they are, and ſhow you the Reaſons they ought not to be turned upon ſuch diſſenters: e Statutes I mean are in number *Five*, *viz.* The 1. *zabeth*, Ca. 2. The 23. *Elizabeth* Ca. 1. The 29. *zabeth* Ca. 6. The 1. *Jac.* Ca. 4. and 3 *Jac.* Ca. 4. ch we ſhall handle in order.

1. The Act of the 1. *Eliz.* Cap. 2. Was made Im- diately after that Queens coming to the Crown, n ſhe found nothing but Papiſts and Proteſtants General, For the word *Puritan* in thoſe days was known, (much leſs our modern Terms of Re- uch, *Whig*, *Sectary*, or *Fanatick*) and ſhe being od Proteſtant (having been Educated therein) reſolved to ſupport that Religion, caſting about her wiſe Council how to do it, That the Indif- nt and *moderate* ſort of Papiſts might not be too h diſguſted or alienated from the Proteſtant Re- n, but be rather invited to cloſe therewith, It therefore on mature delibe.ation Concluded to

go on gently as to the Reformation, and not throw off all the *Ceremonies* at once: And therefore having a pattern of Proteſtant diſcipline made King *Edward* the 6. time ſhe follows the ſteps as near as could be in the beginning, and built on the ſame Foundation which her pious Brother his wiſe and *honeſt Council* had laid. Therefore firſt Act ſhe paſſed, was to take off the Juriſdiction of the See of *Rome* (which had been Re-introduced by her Siſter *Mary* of *unhappy Memory*) and to take off all Coercive power whatſoever from Eccleſiaſtical Perſons, and all was annext to the Imperial Crown of *England*. This Act was Intituled *An Act to Restore to the Crown the antient Juriſdiction &c.* 1. *Eliz. Cap.* And hereby all the Laws made in the time of Queen *Mary* for ſettling the Popes Authority in England were Repealed. And alſo [*Section the* 18*th*] power is given to the Queen to Grant *Commiſſions* under the *Broad Seal* of *England* to ſuch [*Biſhops or Laymen as matter which*] as ſhe ſhould appoint to hold Eccleſiaſtical *Courts*, and none might do it *without*, upon pain of a Præmunire, And alſo the Oath of *Supremacy* formed and hereby Injoined.

The very next Act is That which we have now under Conſideration, Intituled *An Act of Uniformity of Common Prayer, and Service in the Church, and Adminiſtration of the Sacraments*, Which amongſt other things Inflicts *the penalty of* 12d. *for not coming to Church on Sunday and Holy-day.*

Now that this Act was intended againſt Papiſts may be concluded as well becauſe, the whole Act runs for the beating down of the Fopperies and Superſtitions of the Church of *Rome*, and how could it aim at any ſort of Proteſtants, ſince at that time of day there were none but Papiſts and Churchmen in *England*.

This Twelvepence is not forfeited till Conviction which muſt be by a Jury; to which purpoſe, the

ſes of *Oyer* and *Terminer* and of Aſſize and Mayors Head-Officers of Corporations are Authorized inquire, hear and determine the ſame, —— But party muſt be Indicted the next Seſſions or Aſſizes the Offence or not at all. So that they can up- this Act Proſecute at once for no more defaults than re are *Sundaies* and Holy-days between one Seſſions Aſſizes and another, And when the party is ſo victed the ſaid Courts are to make out proceſs Levying the Twelve pences, which ſhall be ied by the Church-Wardens for the uſe of the or.

However there being 52 *Sundaies* and 29. Holy- ies (appointed by our Liturgy to be obſerved) in year, the Conſtant charge by this ſtatute for not ming to Church would be but 4*l.* 1*s.* *p. An.* [And by the way, Note, That We have more Holy-daies Feaſts to be obſerved ſince his Majeſties Reſtau: a, n than ever the Church of *England* owned before, there were antiently but 27. But upon the Re- w of the Book of Common prayer, my Lords the ſhops were pleaſed to add 2 New ones *viz.* The nverſion of St. *Paul* and St. *Barnabas*, and whereas, our old Common-prayer-Books, tis ſaid *The Feaſt* St. Michael *the Arch-Angel*, in our preſent Book, *tis* Michael *and all Angels*, Which ſeems an Affront S. *Michael* at once to leave out his Title of *Arch-An-* and at the ſame time bring in all *other* Angels (as ll of the *lower* as Higher Hierarchies) to *ſhare* with n in a Feſtival, the Honour of which he had en- ed ſo long, ſolely and Intire to himſelf —— but s *by the by*] So that upon the whole matter, If body ſhould be buſy to Execute this Act upon Proteſtant diſſenters from the Eſtabliſhed Church *England*, yet conſidering the trouble of ſuch a nviction, and the difficulty of proving a Nega- e, *viz.* that a man was not at Church, for note the ords are, —— ſhall *repair to his own Pariſh Church*, or

to *some usual place where Common Prayer shall be used*, S
that if he were at Mr. *Read's Meeting-House*, I Co
ceive he were safe from this Act: All this I say Consi
dered the Labour would be more than the trouble—
therefore let's proceed.

2. The second Act of this kind, is 23 *Eliz. Cap.* 1
Intituled *An Act to Retain the Queens Majesties Subje
in their due Obedience.* "And by this, to *Reconcile any*
"*for any to be Reconciled to the See of* Rome, To with
"draw or be with-drawn from the Establisht Religi
"on, to the Romish Religion; Is made High-Trea
"son; And that every one saying *Mass* shall forfei
"200 Marks and every one that hears it 100 Marks
"And every one above 16. years old not repairing to
"some Church or Chappel, but forbearing the same
"contrary to the *said Stat.* 1. *Eliz. C.* 2. shall be in
"lawfully Convicted forfeit 20 *l.* for every month
"And the Justices at the Quarter Sessions are In
"powered to Inquire into the Offences against this
"Act, Except Treason, And if any Indicted here
"upon (Except for Treason) will submit in open
"Court and conform before Judgment given, he shall
"be discharged.

Now that this Statute was expresly and wholly
made against the Papists is evident by the whole
Scope thereof, as punishing saying of *Mass*, & drawing
the Queens Subjects to Popery, *&c.* More especially
by its preamble (which alwaies opens and declares
the Scope of a Law) whereas since the Statutes made
in the 13. year of the Reign of the Queen our Sove-
raign Lady, Intituled, *An Act against the bringing in, and
putting in Execution of Bulls, Writings & Instruments, and
other Superstitious things from the See of* Rome, divers ill
affected Persons have practised by other means than
by Bulls or Instruments Writtten or Printed to with-
draw Her Majesties Subjects to obey the said usurped
Authority of *Rome*, and *IN RESPECT OF
THE SAME* [pray mark] to perswade great
numbers

mbers to with-draw their due Obedience from ir Majesties Laws establisht for the due service of Almighty God ——— For Reformation *WHEREOF*, be it Enacted, *viz.* That to with-draw to the Church of *Rome* shall be *Treason*; and not coming to Church shall forfeit 20 *l. p.* month ——— Nothing can be more plain than that this Levelled *wholly against the Papists*, and cannot at all affect dissenting Protestants.

3. The Statute of 29. *Eliz. Cap.* 6. Is only a Reinforcement of the last Act, and therefore must be onely intended of the same Persons, viz. *Popish Recusants* [For as yet there were no other] whose Penalties this Statute Encreases for not coming to Church: For whereas by the former Statute of 23*d* it was to be only 20 *l. p.* month and bound to the *good Behaviour* after Conviction; *This* gives to the Queen & Her Heirs, a Right to 20 *l. p.* month, for every month after such Conviction *till* they come to Church: And if default be made of payment of the 20 *l.* a month, then to seize all their Goods, and 2 parts of their Real Estate ——— But this is still concerning *Popish Recusants*, for it respects the same that were Offenders against the Statute of the 23. And they were *only Papists*: Therefore 'tis absurd and unjust to turn the Edge on't upon Protestants.

4. We come now to the Statute of 1. *Jac. Ca.* 4. which confirms all the former Statutes made against Popish Recusants in the Queens time, But provides for their being discharged, tho Convicted, upon their coming to Church.

And that it means and intends none but Jesuits and Popish Priests and other Popish Recusants appears manifestly, not only in the Title but in the first Section of the Act it self, and so throughout: The Title, is, *An Act for the due Execution of the Statutes against Jesuites, Seminary Priests, Recusants*, [the 2 former words, including the Romish Clergy, the latter the

Laiety] *&c.* and begins thus — *For the better and more due Execution of the Statutes heretofore made* [*Against whom?*] as well *against Jesuites, Seminary Priests, and other* SUCH-LIKE Priests [That is, other Popish Priests tho not bred up in the *Seminaries*] *as also against all manner of Recusants* [That is Papists tho not in Orders] *Be it Enacted*, &c. *That all & every the Statutes heretofore made against Jesuites, Seminary Priests, and other Priests, Deacons, and Religious and Ecclesiastical Persons whatsoever made, ordained or professed, or to be made by any Authority or Jurisdiction derived, Challenged, or pretended from the See of* Rome, *together with all those made against any manner of recusants* [That is *Papists*, still, but *Lay men* not in Orders nor professed of any Order of Monks or Friars as those before mentioned were] *shall be put in due and Exact Execution.* —— —— Nothing can be more absurd than to rack & force this Law so far besides its Scope, as to make use of it against Protestants agreeing with the Church of *England* in all the doctrine and only differing in a few Indifferent Ceremonies, When it most manifestly appears intended only against Jesuites, Romish Priests, and other Papists.

5. And now was discovered the Hellish *Powder-Plot* of the Papists which occasioned the making of the Statute 3 *Jac. Ca.* 4. Intituled, *An Act for discovering and Repressing Popish Recusants.* So that both the occasion and the very Title, shews evidently against whom this Act is designed, which also appears further in the preamble; The whole purport of this Act all along being only to Reinforce the rest of the Acts against *Popish Recusants*, And for that as thereby appears some of them did come to Church and heard *divine Service*, to save the Penalties in the former Acts, and yet continued *Papists still in their hearts*, Therefore by this Act they were all to take the Sacrament once a year, And if they refused they should forfeit 20 *l.* the 1st year, for the 2d year 40 *l.* & for every year afterwards 60 *l.* untill he or she have received the said Sacrament.

And

And by the 4th Section, the Church Wardens and Constables are to present the monthly absence of all POPISH Recusants, ——— but they are not bound by this Act to present any but Papists, For from this Act we may observe, that none can be Prosecuted upon this Act or any of the other which it refers to (which are all those here before rehearsed) unless they be POPISH Recusants, for so are the expres words of the Act. And without doubt should any *Officer* whatsoever Present or prosecute any person thereupon other than a Popish Recusant, the person presented may *Joyn Issue*, That he is *no such person these Acts intend, being not a Papist.*

So that upon the whole matter, we may conclude, it is an abuse, and utterly Illegal, to Prosecute Protestants on such *Laws* as were made solely and wholly against Papists, as will further appear in our next Observation; and we have heard some Judges *have declared* so much.

However I shall here add the *Judgment* of the *House of Commons* in the Case, for tho I know and own a *vote* of either or both Houses cannot Repeal a Law, nor alter its sense, yet certainly the House consisting of so many wise discreet persons, & a great number of them excellently Learned in the Laws, they are as like to interpret a doubtful Law, and hit upon the true Interpretation how far and to what it does extend, as *two* or *three* little swaggering *Justices*, or any *single Judge*: At least were I an Officer I should rather incline to credit their opinion, & not run an hazard by employing the *Toils* made for restraining the *Wolves and the Bears*, to intangle & destroy the Innocent *sheep*, meerly because they do not all exactly tread in the *very same* Path and bite punctually all of one Sort of Grass.

Sabbati Sexto. die Nov. 1680.

Resolved Nemine contradicente, *That it is the opinion of this House,*

House, That the Acts of Parliament made in the Reigns of Queen Elizabeth *and King* James *against Popish Recusants, ought not to be extended against Protestant dissenters.*

And now having discharged these unlawful weapons, let's see what *Legal Arms* there are or have been really formed against the Sectaries. And the *first* was the very sword of *Goliah*, there was none like it.

1. I mean the Act of 35 *Eliz. Ca.* 1 (which some would make us believe has had as many *Lives* as a Cat) intituled *An Act to Retain the Queen's Majesties Subjects in their due Obedience.* This was the first Law that was made since the Reformation, against those we commonly called Sectaries, Conventiclers, or Protestant Dissenters; and this Act indeed, beyond all dispute, was made against them, and them only; for the Popish Recusants are expresly Excepted out of it, as appears by the Act: And that the Reader may better judge of the true difference between *this Act* and *those* others before recited, made against Popish Recusants, by the style and expressions. I shall here insert the first Paragraph, and give you the substance of the rest of it.

'For the preventing and avoiding of such great Inconveniencies and Perils as might happen and grow 'by the wicked and dangerous practices of seditious 'Sectaries, and disloyal Persons; Be it Enacted by 'the Queen's most Excellent Majesty, and by the 'Lords Spiritual and Temporal, and the Commons 'in this present Parliament Assembled; and by the 'Authority of the same, That if any person or persons, above the Age of sixteen years, which shall 'obstinately Refuse to Repair to some Church, Chapel, or usual place of Common-Prayer, to hear Divine Service, Established by Her Majesties Laws 'and Statutes in that behalf made, and shall forbear 'to do the same by the space of one month next after, 'without any lawful cause, shall at any time after

'forty

forty daies next after the End of this Seſſion of Parliament, by Printing, Writing, or Expreſs Words or Speeches, adviſedly, or purpoſely practiſe, or go about to make or perſuade any of Her Majeſties Subjects, or any other within her Highneſs's Realms or Dominions, to deny, withſtand, and impugn Her Majeſties Power and Authority, in caſes Eccleſiaſtical, united and Annexed to the Imperial Crown of this Realm; or to that end or purpoſe ſhall adviſedly or maliciouſly move, or perſuade any other perſon whatſoever, to forbear, or abſtain from coming to Church, to hear Divine Service, or to Receive the Communion, according to Her Majeſties Laws and Statutes aforeſaid, or to come to, or be preſent at any unlawful Aſſemblies, Conventicles or Meetings, under colour or pretence of any Exerciſe of Religion, contrary to Her Majeſties Laws and Statutes; or if any perſon or perſons which ſhall obſtinately Refuſe to Repair to ſome Church, by the ſpace of one month, to hear Divine Service, as is aforeſaid, ſhall after the ſaid forty daies, either of him or themſelves, or by the Motion, Perſuaſion, Inticement or Allurement of any other, willingly Joyn in, or be preſent at any ſuch Aſſemblies, Conventicles, or Meeting under colour or pretence of any ſuch Exercise of Religion, contrary to the Laws and Statutes of this Realm as is aforeſaid; That then every ſuch perſon ſo offending, as aforeſaid, and being thereof lawfully convicted, ſhall be *Committed to Priſon*, and there to Remain, *without Bail* or Mainpriſe, *until* they ſhall *Conform*, and yield themſelves to come to ſome Church, Chapel, or uſual place of Common-Prayer, and hear Divine Service, *&c.*

Then the Act goes on, and provides, That if the perſon do not Conform within three months after Conviction, he ſhould Abjure, that is, be Baniſht, and ſwear never to come back without leave; And if he will not ſwear ſo, then the ſame to be Felony, without Benefit of Clergy.

If

From which Act these 3 things are observable.

1. That the same was wholly intended against the *Puritanes* or *Sectaries*, for the Papists are expresly exempted by a particular clause, Sect. 12. in these words, 'Provided that *No Popish* Recusant, or *Feme* 'Covert shall be compelled or bound to *abjure by vertue* 'of this Act.

2. That Q. *Eliz.* and her wise Parliament did not intend or take such Protestant Recusants to be within the meaning of, or punishable by the other before mentioned Statutes against popish Recusants: For if they had so understood, they might have punished them sufficiently on those old Laws without giving themselves the trouble of making this new Law against them *Frustra fit per plura quod fieri potest per pauciora. God and the Law do nothing in vain.*

3. If it be objected, That all those Laws as well as this ought to be construed to one and the same end & scope, and that all the before mentioned Acts of Q. *Elizabeth*, and K. *James* are equally to be applied to all Dissenters from the Establisht Church of *England*: I answer that cannot be; for since in this Act no Papists are concerned, being particularly exempted as aforesaid: Then it necessary follows, if the popish Recusants shall not be punished by this Act made against Sectaries and seditious Conventiclers, that then the Sectaries and Conventiclers, Protestant Dissenters, that is Protestant Recusants (for that 'tis they aimed to colour the laying the other Acts upon them) shall not be prosecuted upon those Laws made only against popish Recusants; for if they should, then you leave the Protestant Recusants in a far worse condition than the Papists, the one being provided and not the other.

But still note that all that I have said about this Act of the 35. of *Eliz.* comparing it with the others made against *Popish* Recusants, is only to shew the nature of the one and the other: For the truth is, this Act of the 35th of *Eliz. is not now in force*,— As appears thus: 1. The

1. The very words thereof ſhew it to have been originally but a temporary Act, for the laſt words of it are theſe,— *This Act to continue no longer than to the end of the next Seſſion of Parliament.*

2. By ſeveral Acts it was continued till the 1ſt year of K. *James*, and then it was enacted, that the ſame ſhould be continued, and remain in Force until the end of the firſt Seſſion of the next Parliament.

3. The ſecond and next Seſſion of Parliament began and holden by Prorogation the 5th of *Nov.* in the 2d year of K. *James*, and ended the 27th of *May* next, and was then prorogued to the 18th, of *Nov.* 1606. In which Seſſion there was no continuance of this Statute of the 35th of *Eliz.* ſo that there it expired, abſolutely ceaſed, and was of no more force than if it had never been, and ſo continued for many years buried in Oblivion.

4. In a Parliament held the 21. of K. *James*, ca. 28. it is (amongſt other things) enacted, 'That *this Statute of the* 35. *of* Eliz. *ſhall be adjudged ever ſince the Seſſion in the Seventh Year of His Majeſties Reign of* England, *to have been of ſuch force and effect, as the ſame were the laſt day of that Seſſion, and from thenceforth to the end of the firſt Seſſion of the next Parliament.*— But the truth is, that the ſaid Statute of the 35th of *Eliz.* was *in no force*, nor of any effect at the laſt day of the Seſſion in the 7th year of K. *James*, being expired and gone long before, *viz.* in the 3. year of that King as aforeſaid. And being ſo down then this Stat. of the 21. *Jacobi* can no way ſet it up again; for this only ſets up what was in force in that Seſſion of the 7th of K. *James*, and no otherwiſe.

5. So likewiſe in the 3. *Caroli primi*, cap. 4. His Act (amongſt others) is mentioned; but how? — *That it ſhall continue to the end of the firſt Seſſion of the next Parliament, in ſuch force and effect as it was the firſt year of* Charles *the firſt*,— when indeed it was then in no force at all.

6. In the 16th *Caroli secundi*, cap. 4. an Act was made, Intituled, *An Act to prevent and suppress seditious Conventicles.* Which begins thus: 'Whereas an Act 'made in the 35*th* year of the Reign of our late Sove-'raign Lady Queen *Eliz.* Intituled, *An Act to retain 'the Queens Majesties Subjects in their due Obidience*, hath 'not been put in Execution, by reason of some doubts 'of late made, whether the said Act be still in force 'although it be very clear and evident: And it is here-'by declared, that the said Act is still in force, and 'ought to be put in Execution: For providing there-'fore of further and more speedy Remedies, *&c.* Be 'it enacted, *&c.* And the last clause of this Statute of the 16 *Car.* 2*d.* runs thus: 'Provided that this Act 'continue in force for 3 years after the end of this 'present Session of Parliament, and from thence to 'the end of the next Session of Parliament, after the 'said 3 years, and no longer.

Now how far these words — *It is hereby declared that it is in force, and ought to be put in execution*; without saying, it *is hereby enacted, that it shall be* in force, might operate to give some Life and strength to the aforesaid expired Statute of the 35th of *Eliz.* I shall not determine: But suppose it were thereby *set on foot again*, this last Statute is but one *intire* Statute, and that part which declares or inables the Statute of the 35th of *Eliz.* to be in force, is joined and annexed to the rest, and is altogether but *one Law*, and hath its period at the time before prefixed, and then that declarative part must die with the rest.

Now *that Session* wherein this Statute of 16 *Car.* 2. was made, ended the 16th and 17th of *Car.* 2. The three Years, for which it was to continue commenc'd, and ended the 20th *Car.* 2*d.* but after the three years it was to continue till the next Session of Parliament, which *next Session*, after the three years, began 10. *October*, 1667. and by Adjournments was continued to the 24th of *October*, 1670, being the 22d

Car. 2d. and then was the end of that, and with it this Conventicle Act expired, ſo that now there is no pretence of the 35th of *Elizabeth*'s being in force; for the declarative part in this Conventicle Act cannot enforce or give Life to any thing longer than it lives itſelf: For if the *Declaring* part of this Act, after itſelf is extinguiſht, can be read, urg'd or conſtrued as a Law to enforce and enliven another Statute, which hath no being of a Law in it ſelf, then it would neceſſarily follow, that an expired Law is as Authentick as a Law in being, which is abſurd.

From what hath been ſaid, it appears, That as *Proteſtant Diſſenters* ought not to be proſecuted on the Laws made againſt Popiſh Recuſants; ſo likewiſe 'tis very evident, That both the Statute of the 35th of *Eliz.* and alſo that of the 16th of *Car. ſecundi*, are Expired, and of no force. And indeed 'tis happy for the Nation that they are ſo; for had theſe two Acts been ſtill in force, being of a *cruel* ſanguinary nature, much miſchief might have accrewed to the people of this Kingdom.

So that there are now *no Laws* in being to puniſh the Conventiclers, and the Nonconformiſt Miniſters, who did not Conform to the Act of Uniformity made in this King's Reign; but the Act commonly called the 5 *Mile* or *Oxford* Act: And the Conventicle Act made the 22th of this King.

Theſe we ſhall ſeverally conſider.

Anno 17. *Caroli Secundi, Ca.* 2.

An Act for Reſtraining Nonconformiſts from Inhabiting in Corporations.

'Whereas divers Parſons, Vicars, Curates, Lecturers, and other perſons in holy Orders have not declared their unfeigned Aſſent and Conſent to the uſe of all things contained and preſcribed in the Book of

'Com-

'Common-Prayer, and Administration of the Sacra-
'ments, and other Rites & Ceremonies of the Church
'according to the use of the Church of *England*, or
'have not subscribed the Declaration or Acknowledg-
'ment contained in a certain Act of Parliament made
'in the 14 Year of His Majesties Reign, and Intituled,
'*An Act for the Uniformity of publick Prayers, and Ad-*
'*ministration of Sacraments, and other Rites and Ceremonies,*
'*and for the establishing the Form of making, ordaining, and*
'*consecrating of Bishops, Priests and Deacons in the Church*
'*of* England, according to the said Act, or any o-
'ther subsequent Act, And whereas they or some of
'them, and diverse other person and persons not or-
'dained according to the Form of the Church of *Eng-*
'*land*, and as have since the Act of Oblivion taken up-
'on them to preach in unlawful Assemblies, Conven-
'ticles, or Meetings, under colour or pretence of Ex-
'ercise of Religion, contrary to the Laws and Statutes
'of this Kingdom, have setled themselves in diver
'Corporations in *England*, sometimes three or more
'of them in a place, thereby taking an opportunity
'to distil the poisonous Principles of Schism and Re-
'bellion into the hearts of His Majesties Subjects, to
'the great danger of the Church and Kingdom.

II. 'Be it therefore enacted by the Kings most excel-
'lent Majesty, by and with the Advice and consent of
'the Lords Spiritual and Temporal, and the Commons
'in this present Parliament assembled; and by the
'Authority of the same, That the said Parsons, Vi-
'cars, Curates, Lecturers, and other persons in Ho-
'ly Orders, or pretended Holy Orders, or pretend-
'ing to Holy Orders, and all Stipendiaries, or other
'persons who have been possessed of any Ecclesiastical
'or Spiritual Promotion, and every of them, who
'have not declared their unfeigned Assent and Con-
'sent as aforesaid, and subscribed the Declaration a-
'foresaid, and shall not take and subscribe the Oath
'following.

I *A. B.*

I *A. B.* do ſwear, That it is not lawful upon any pretence whatſoever, to take Arms againſt the King; and that I do abhor that Traiterous poſition of taking Arms by his Authority againſt his Perſon, or againſt thoſe that are commiſſioned by him, in purſuance of ſuch Commiſſions; and that I will not at any time endeavour any Alteration of Government either in Church or State.

III. 'And all ſuch perſon, and perſons as ſhall take upon them to preach in any unlawful Aſſembly, Conventicle or Meeting, under colour or pretence of any exerciſe of Religion, contrary to the Laws and Statutes of this Kingdom, (2.) ſhall not at any time from and after the 24th day of *March*, which ſhall be in this preſent year of our Lord God One thouſand ſix hundred ſixty and five, unleſs only in paſſing upon the Road, come or be within five Miles of any City, or Town Corporate, or Burrough, that ſends Burgeſſes to the Parliament, within His Majeſties Kingdom of *England*, Principality of *Wales*, or of the Town of *Berwick* upon *Tweed*, (3) or within five Miles of any Pariſh Town or place, wherein he or they have ſince the Act of Oblivion been Parſon, Vicar, Curate, Stipendary, or Lecturer, or taken upon them to preach in any unlawful Aſſembly, Conventicle or Meeting, under colour or pretence of any exerciſe of Religion, contrary to the Laws and Statutes of this Kingdom, (4) before he or they have taken and ſubſcribed the Oath aforeſaid, before the Juſtices of the Peace at their Quarter-Seſſions, to be holden for County, Riding, or Diviſion next unto the ſaid Corporation, City, or Burrough, Pariſh, place or Town, in open Court; which ſaid Oath the ſaid Juſtices are hereby impowered there to adminiſter;) (5.) upon forfeiture for every ſuch Offence the ſum of Forty pounds of lawful Engliſh Money; the one third part thereof to His Majeſty and His Succeſſors, the other third

'part

'part to the use of the poor of the Parish where the
'Offence shall be committed, and the other third
'part thereof to such person or persons as shall or
'will sue for the same by Action of Debt, Plaint
'Bill, or Information in any Court of Record at *West-*
'*minster*, or before any Justices of Assize, *Oyer and*
'*Terminer*, or Gaol-delivery, or before any Justices
'of the Counties Palatine of *Chester*, *Lancaster*, or *Dur-*
'*ham*, or the Justices of the great Sessions in *Wales*,
'or before any Justices of Peace in their Quarter
'Sessions, wherein no Essoin, Protection, or wager
'of Law shall be allowed.

IV. 'Provided always, and be it further enacted
'by the Authority aforesaid, That it shall not be law-
'ful for any person or persons restrained from coming
'to any City, Town Corporate, Burrough, Parish
'Town, or place, as aforesaid, or for any other Per-
'son or Persons as shall not first take and subscribe the
'aforesaid Oath, and as shall not frequent Divine Ser-
'vice established by the Laws of this Kingdom, and
'carry him or her self reverently, decently, and
'orderly there, to teach any publick or private
'School, or take any Boarders or Tablers, that are
'taught or instructed by him or her self, or any other
'upon pain for every such Offence to forfeit the sum
'of Forty pounds, to be recovered and distributed
'as aforesaid.

V. 'Provided also, and be it further enacted by
'the Authority aforesaid, that it shall be lawful for
'any two Justices of the Peace of the respective
'County, upon Oath to them of any Offence
'gainst this Act, which Oath they are hereby im-
'powered to administer, to commit the Offender for
'six Months without Bail or Mainprise, unless upon
'or before such Commitment, he shall before the
'said Justices of the Peace, swear and subscribe the
'aforesaid Oath and Declaration.

VI. 'Provided always, that if any person intend-

to be restrained by vertue of this Act, shall without fraud or Covin be served with any Writ, *Sub-pœna*, Warrant, or other Process, whereby his personal appearance is required, his Obedience to such Writ, *Sub-pœna*, or Process shall not be construed an Offence against this Act.

Note, That as to the Penalty of Forty Pound, the party must be tried at the Assises or Sessions before it is forfeited. But any two Justices of Peace may commit for six Months, unless before them he'l swear and subscribe the Oath in this Declaration specified, the Assent and Consent, and the Declaration therein referr'd unto, which if he do he puts himself out of their power.

Now the Assent and Consent he has spoke of is appointed by the Stat. 13, and 14. of *Car. 2di, chap.* 4. as follows.

"I *A.B.* do here declare my unfeigned Assent & Consent to all & every thing contained & prescribed, in & by the Book intituled, the Book of common Prayer, & Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of *England*, together with the Psalter or Psalms of *David*, pointed as they are to be sung or said in Churches; and the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons.

The Declaration is by the Act last mentioned, as follows.

I *A. B.* do declare, that it is not lawful, upon any pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous position of taking Arms by his Authority against his Person, or against those that are commissioned by him; and that I will conform to the Liturgy of the Church of *England*, as it is now by Law established: And I do declare, That I do hold there lies no Obligation upon me, nor any other person, from the Oath commonly

monly called the solemn League and Covenant to endeavour any change or alteration of Government, either in Church or State; and that the same was in it self an unlawful Oath, and imposed upon the Subjects of this Realm against the known Laws and Liberties of this Kingdom.

But note, that this last branch of this Declaration, by a subsequent clause of the same Act, was to continue but till the 25th day of *March*, 1682. so that now the same is not to be required. —And thus much for this Five-Mile Act.

We now proceed to the other Statute against Protestant Dissenters, *viz.*

Anno Vicessimo Secundo Caroli Secundi Regis, Cap. 1.
An Act to prevent and suppress Seditious Conventicles.

For providing further and more speedy Remedies against the growing and dangerous practices of Seditious Sectaries, and other disloyal persons, who under pretence of Tender Consciences, have, or may at their Meetings contrive Insurrections (as late Experience hath shewn.) (2.) Be it Enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament Assembled, and by Authority of the same, That if any person of the Age of sixteen years, or upwards, being a Subject of this Realm, at any time after the tenth day of *May* next, shall be present at any Assembly, Conventicle or Meeting, under colour or pretence of any Exercise of Religion, in other manner than according to the Liturgy and practice of the Church of *England*, in any place within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, at which Conventicle, Meeting or Assembly there shall be five persons or more Assembled together, over and besides those of the same household if it be in a house where there is a Family inhabiting

ing; or if it be in a house, field, or place where there is no Family inhabiting; then where any five persons or more, are so Assembled as aforesaid, it shall and may be lawful to and for any one or more Justices of the Peace of the County, Limit, Division, Corporation or Liberty wherein the Offence aforesaid shall be Committed; or for the chief Magistrate of the place where the Offence aforesaid shall be committed; and he and they are hereby Required and Enjoyned *upon Proof* to him or them Respectively made of such Offence, either by Confession of the Party, or Oath of two Witnesses. (3) Which Oath the said Justice and Justices of the Peace, and Chief Magistrate respectively, are hereby Required and Impowered to Administer) or by Notorious Evidence and Circumstance of the fact, to make a Record of every such Offence under his or their Hands and Seals respectively; which Record so made as aforesaid, shall to all intents and purposes be in Law taken and adjudged to be a full and *perfect Conviction* of every such Offender for such offence; and thereupon the said Justice, Justices, and Chief Magistrate respectively shall Impose on every such Offender so convict as aforesaid, a Fine of five shillings for such first Offence; which Record and Conviction shall be certified by the said Justice, Justices or Chief Magistrate, at the next Quarter-Sessions of the Peace, for the County or place where the Offence was committed.

2. And be it further Enacted by the Authority aforesaid, That if such Offender so convicted as aforesaid, shall at any time again commit the like Offence or Offences, contrary to this Act, and be thereof in manner aforesaid convicted, then such Offender so convict of such like Offence or Offences, shall for every such Offence incur the penalty of ten shillings; (2.) Which Fine and Fines for the first and every other Offence, shall be Levied by Distress and Sale of

the

the Offenders Goods and Chattels; or in case of the poverty of such Offender, upon the Goods and Chattels of any other person or persons who shall be then convicted in manner aforesaid of the like Offence at the same Conventicle, at the discretion of the said Justice, Justices, or Chief Magistrate respectively, so as the Sum to be Levied on any one person in case of the poverty of other Offenders, amount not in the whole to above the Sum of ten pounds, upon occasion of any one Meeting as aforesaid: (3.) And every Constable, Headborough, Tythingman, Church-Wardens, and Over-seers of the Poor respectively, are hereby Authorized and Required to Levy the same accordingly, having first received a Warrant under the Hands and Seals of the said Justice, Justices, or Chief Magistrate respectively so to do; (4.) The said Monies so to be Levied, to be forthwith delivered to the same Justice, Justices, or Chief Magistrate, and by him or them to be distributed, the one third part thereof to the use of the King's Majesty, His Heirs and Successors, to be paid to the High Sheriff of the County for the time being in manner following; that is to say, the Justice or Justices of Peace shall pay the same into the Court of the respective Quarter-Sessions, which said Court shall deliver the same to the Sheriff, and make a Memorial on Record of the payment and delivery thereof, which said Memorial shall be a sufficient and final discharge to the said Justice and Justices, and a charge to the Sheriff, which said discharge and charge shall be certified into the Exchequer together, and not one without the other: And no Justice shall or may be questioned, or accountable for the same in the Exchequer or elsewhere, than in Quarter-Sessions; another third part thereof to and for the use of the Poor of the Parish, where such Offence shall be committed; and the other third part thereof to the Informer and Informers, and to such

person

ſon and perſons as the ſaid Juſtice, Juſtices, or ief Magiſtrate reſpectively, ſhall appoint, having ard to their diligence and Induſtry in the diſcoy, diſperſing and puniſhing of the ſaid Conven-ies.

And be it further enacted by the Authority aforeid, That every perſon who ſhall take upon him to each or teach in any ſuch Meeting, Aſſembly, or nventicle, and ſhall thereof be convicted as aforeid, ſhall forfeit for every ſuch firſt Offence the ſum Twenty pound, to be Levied in manner aforeſaid, on his Goods and Chattles; (2.) And if the ſaid eacher or Teacher ſo convicted be a ſtranger, and Name and Habitation not known, and is fled and not be found, or in the Judgment of the Juſtice, ſtices, or chief Magiſtrate, before whom he ſhall be nvicted, ſhall be thought unable to pay the ſame, the id Juſtice, Juſtices, or chief Magiſtrate reſpectively, e hereby impowered and required to levy the ſame Warrant as aforeſaid upon the Goods & Chattels of y ſuch perſons who ſhall be preſent at the ſame Conenticle, any thing in this or any other Act, Law, or tatute to the contrary notwithſtanding; and the Moy ſo levied to be diſpoſed of in manner aforeſaid.

(3.) And if ſuch Offender ſo convicted as aforeſaid, all at any time again commit the like Offence or Ofences contrary to this Act, and be thereof convicted manner aforeſaid, then ſuch Offendor ſo convicted ſuch like Offence or Offences, ſhall for every ſuch ffence incur the penalty of Forty pounds, to be leied and diſpoſed as aforeſaid.

(4.) And be it further enacted by the Authority aforeid, That every perſon that ſhall wittingly and willingly ſuffer any ſuch Conventicle Meeting, or unlawful Aſſembly aforeſaid, to be held in his or her Houſe, out-houſe, Barn, Yard, or Backſide, and be convicted thereof in manner aforeſaid, ſhall forfeit the ſum of

20 *l.*

20 *l.* to be levied in manner aforesaid, upon his o
her Goods and Chattles; or in case of his or her p
verty or inability as aforesaid, upon the Goods a
Chattels of such persons who shall be convicted
manner aboveſaid, of being present at the same Co
venticle; and the Money so levied to be disposed
in manner aforesaid.

5. Provided always, and be it enacted by the A
thority aforesaid, That no person shall by any clau
of this Act be liable to pay above Ten pounds for a
one Meeting, in regard of the poverty of any oth
person or persons.

Provided also, and be further enacted, That in a
cases of this Act where the penalty or sum charge
upon any Offendor, exceeds the sum of Ten shilling
and such Offendor shall find himself aggrieved, it sha
and may be lawful for him within one Week aft
the said penalty or Money charged shall be paid
levied, to appeal in writing from the person or p
sons convicting, to the judgment of the Justices of t
Peace in the next Quarter-Sessions, (2.) To whom
the Justice or Justices of Peace, chief Magistrate
Alderman, that first convicted such Offendor, sha
return the Money levied upon the Appellant, and sha
certifie under his and their Hands and Seals, the Ev
dence upon which the conviction past, with the whol
Record thereof, and the said Appeal: (3.) Whe
upon such Offender may plead and make defen
and have his *Tryal by a Jury* thereupon: (4) And
case such Appellant shall not prosecute with effect,
if upon such Trial he shall not be acquitted, or Jud
ment pass not for him upon his said Appeal, the
Justices at the Sessions shall give treble costs again
such Offendor for his unjust Appeal, (5.) and no
ther Court whatsoever shall intermeddle with a
cause or causes of Appeal upon this Act, but the
shall be finally determined in the Quarter-Sessions o
ly.

7. Pr

7. Provided alwaies, and be it further Enacted, upon the delivery of ſuch Appeal as aforeſaid, perſon or perſons appellant, ſhall enter before perſon or perſons Convicting into a Recogni-nce, to Proſecute the ſaid Appeal with Effect. 2.) Which ſaid Recognizance the Perſon or Per-ns Convicting is hereby Impowered to take, and quired to Certifie the ſame to the next quarter ſions. (3.) And in Caſe no ſuch Recognizance entred into, the ſaid Appeal to be null and ld.

8. Provided alwaies that every ſuch Appeal ſhall left with the Perſon or Perſons ſo Convicting as reſaid, at the time of the making thereof.

9. And be it further Enacted by the Authority reſaid, that the Juſtice, Juſtices of the Peace and hief Magiſtrate reſpectively, or the reſpective Con-bles, Headboroughs and Tything-men by *Warrant* m the ſaid Juſtice, Juſtices, or Chief Magiſtrate ſpectively, ſhall and may with what Aid, Force, Aſſiſtance they ſhall think fit, for the better ecution of this Act, after Refuſal or Denial to r, break open and enter into any Houſe or r place, where they ſhall be Informed of any Conventicle as aforeſaid, is or ſhall be held, as within Liberties as without; (2.) And take their Cuſtody the Perſons there unlawfully Aſ-bled, to the Intent they may be proceeded a-nſt according to this Act: (3.) And that the utenants or Deputy Lieutenants, or any Com-ſſionated Officer of the *Militia*, or other of his eſties forces, with ſuch Troops or Companies Horſe and Foot; and alſo the Sheriffs and other giſtrates and Miniſters of Juſtice, or any of m, jointly or ſeverally within any of the Coun-s or Places within this Kingdom of *England*, Do-ion of *Wales*, or Town of *Berwick* upon *Tweed*, ſuch other Aſſiſtance as they ſhall think meet,

or can get in Readineſs with the ſooneſt, *on Cer-ficate* made to them reſpectively under the Ha and Seal of any one Juſtice of the Peace or Ch Magiſtrate, of his particular Information or Kno ledge of ſuch unlawful Meeting or Conventicle h or to be held in their reſpective Counties or ces, and that he with ſuch Aſſiſtance as he can together, is not able to ſuppreſs and diſſolve ſame, ſhall and may, and are hereby required a enjoyned to Repair unto the place where they ſo held or to be held; and by the beſt means th can, Diſſolve, Diſſipate, or prevent all ſuch unla ful Meetings, and take into their Cuſtody, ſuch a ſo many of the ſaid Perſons ſo unlawfully Aſſe bled as they ſhall think fit, to the Intent they m be Proceeded againſt according to this Act.

10. Provided alwaies that no Dwelling-houſe any Peer of this Realm where he or his Wife then be Reſident, ſhall be ſearched by vertue this Act, but by immediate Warrant from his M jeſty under his Sign Manual, or in the Preſence the Lieutenant, or one Deputy Lieutenant, or t Juſtices of the Peace, whereof one to be of t Quorum of the ſame County or Riding.

11. And be it further Enacted by the Autho ty aforeſaid, that if any Conſtable, Headborou Tythingman, Church-warden or Overſeer of Poor, who *Shall know or be credibly Informed* of ſuch Meetings or Conventicles held within his P cincts, Pariſhes or Limits, and ſhall not give Inf mation thereof to ſome Juſtice of the Peace, the chief Magiſtrate, and endeavour the Conv on of the Parties according to his Duty, but ſu Conſtable, Headborough, Tything-man, Chur warden, Overſeers of the Poor, or any perſon la fully called in Aid of the Conſtable, Headborou or Tything-man, ſhall wilfully and wittingly o the performance of his Duty, in the Execution

his Act, and *Be thereof Convicted in manner aforeſaid*, he ſhall forfeit for every ſuch Offence the Summe of five Pound to be Levyed upon his Goods and Chattels, and diſpoſed in manner aforeſaid. (2.) And that if any Juſtice of the Peace, or Chief Magiſtrate ſhall wilfully and wittingly omit the Performance of his Duty in the Execution of this Act, he ſhall forfeit the Summe of one hundred Pounds, the one Moiety to the uſe of the Informer, to be recovered by Action, Suit, Bill or Plaint, in any of his Majeſties Courts at *Weſtminſter*, wherein no Eſſoign, Protection or Wager of Law ſhall lie.

12. And be it further Enacted by the Authority aforeſaid, that if any Perſon be at any time Sued for putting in Execution any of the Powers contained in this Act, otherwiſe than upon Appeal allowed by this Act, ſuch Perſon ſhall and may Plead the General Iſſue, and give the ſpecial matter in Evidence; (2.) And if the Plaintiff be Nonſuit, or a Verdict paſs for the Defendant, every ſuch Defendant ſhall have his full Treble Coſts.

13. And be it further Enacted by the Authority aforeſaid, that this Act, and all clauſes therein contained, ſhall be Conſtrued moſt largely and beneficially for the ſuppreſſing of Conventicles, and for the Juſtification and Encouragement of all Perſons to be Employed in the Execution thereof. (2.) And that no Record, Warrant or Mittimus to be made by Vertue of this Act, or any Proceedings thereupon ſhall be Reverſed, Avoided, or any way Impeached by reaſon of any Default in form. (3.) And in Caſe any Perſon offending againſt this Act, ſhall be an Inhabitant in any other County or Corporation, or fly into any other County or Corporation after the Offence Committed, the Juſtice of Peace or Chief Magiſtrate before whom he ſhall be Convicted as aforeſaid, ſhall certifie the ſame under his hand and Seal, to any

Justice of Peace, or chief Magistrate of such o-
ther County or Corporation wherein the said per-
son or persons are Inhabitants, or are Fled into
(4.) Which said Justice or chief Magistrate respe-
ctively, is hereby Authorized and required to Le-
vy the Penalty or Penalties in this Act menti-
ed upon the Goods and Chattels of such perso
or Persons, as fully as the said other Justice o
Peace might have done, in case he or they ha
been Inhabitants in the place where the Offence
was Committed.

14. Provided also that no Person shall be Pu-
nished for any Offence against this Act, unless such
Offender be Prosecuted for the same within three
Months after the Offence Committed. (2.) And
that no Person who shall be Punished for any Of-
fence by Vertue of this Act, shall be Punished
for the same Offence by Vertue of any other Act
or Law whatsoever.

15. Provided and be it further Enacted by the
Authority aforesaid, that every Alderman of *Lon-
don* for the time being, within the City of *London*
and the Liberties thereof, shall have (and they
and every of them are hereby Impowered and
required to Execute) the same power and Au-
thority within *London* and the Liberties there-
of, for the Examining, Convicting and Punishing
of all Offences within this Act committed within
London, and the Liberties thereof, which any Jus-
tice of Peace hath by this Act in any County of
England, and shall be subject to the same Penalties
and Punishments, for not doing that which by
this Act is directed to be done by any Justice of
Peace in any County of *England*.

16. Provided and be it Enacted by the Autho-
rity aforesaid, that if the Person Offending and
Convicted as aforesaid, be a Feme-covert, cohabi-
ing with her Husband, the Penalties of five Shilling
and

ten Shillings, ſo as aforeſaid Incurred, ſhall Levyed by Warrant as aforeſaid, upon the ods and Chattels of the Husband of each me-covert.

17. Provided alſo that no Peer of this Realm ll be Attached or Impriſoned by Vertue or ce of this Act, any thing, matter or clauſe rein to the contrary notwithſtanding.

18. Provided alſo, that neither this Act, nor y thing therein contained, ſhall extend to In-idate or avoid his Majeſties Supremacy in Ec-eſiaſtical Affairs; (2.) But that his Majeſty and Heirs and Succeſſors, from time to time, and all times hereafter, Exerciſe and Enjoy all Pow-and Authority in Eccleſiaſtical Affairs, as ful-and as amply as himſelf or any of his Prede-ſors have, or might have done the ſame, any ng in this Act notwithſtanding.

Notes upon the foregoing Act.

1. By the Title, Preamble and Scope of the Act appears that the ſame is intended for ſuppreſſing *itious* Conventicles under *Pretence* of Religious orſhip; that is, where the Conventiclers meet to-her under a pretence of Worſhip, not according the Liturgy and Practice of the Church of *England*, indeed to carry on ill deſigns againſt the State.

2. If any ſuch Conventicle be, the Juſtices know it by the Oaths of *two Witneſſes*, may make a Re-d thereof, and then the Perſons ſo offending, ll forfeit ſo as in the Act you have heard.

3. It muſt appear upon Oath before the Juſti-, or Confeſſion of the Parties, 1. That it was a *itious* Conventicle, met together to diſturb the ace, under pretence of Religion. 2. That the orſhip there practiſed, was *not according* to the urgy and Practice of the Church of *England*;

Justice of Peace, or chief Magistrate of such o-
ther County or Corporation wherein the said per-
son or persons are Inhabitants, or are Fled into
(4.) Which said Justice or chief Magistrate respe-
ctively, is hereby Authorized and required to Le-
vy the Penalty or Penalties in this Act mentio-
ed upon the Goods and Chattels of such perso
or Persons, as fully as the said other Justice o
Peace might have done, in case he or they had
been Inhabitants in the place where the Offence
was Committed.

14. Provided also that no Person shall be Pu-
nished for any Offence against this Act, unless such
Offender be Prosecuted for the same within three
Months after the Offence Committed. (2.) And
that no Person who shall be Punished for any Of-
fence by Vertue of this Act, shall be Punished
for the same Offence by Vertue of any other Act
or Law whatsoever.

15. Provided and be it further Enacted by the
Authority aforesaid, that every Alderman of *Lon-
don* for the time being, within the City of *London*
and the Liberties thereof, shall have (and the
and every of them are hereby Impowered and
required to Execute) the same power and Au-
thority within *London* and the Liberties there-
of, for the Examining, Convicting and Punishing
of all Offences within this Act committed within
London, and the Liberties thereof, which any Ju-
stice of Peace hath by this Act in any County o
England, and shall be subject to the same Penalties
and Punishments, for not doing that which by
this Act is directed to be done by any Justice o
Peace in any County of *England*.

16. Provided and be it Enacted by the Autho-
rity aforesaid, that if the Person Offending and
Convicted as aforesaid, be a Feme-covert, cohabi-
ing with her Husband, the Penalties of five Shillings

and

ten Shillings, ſo as aforeſaid Incurred, ſhall Levyed by Warrant as aforeſaid, upon the oods and Chattels of the Husband of each me-covert.

17. Provided alſo that no Peer of this Realm ll be Attached or Impriſoned by Vertue or orce of this Act, any thing, matter or clauſe rein to the contrary notwithſtanding.

18. Provided alſo, that neither this Act, nor y thing therein contained, ſhall extend to In-alidate or avoid his Majeſties Supremacy in Ec-leſiaſtical Affairs; (2.) But that his Majeſty and s Heirs and Succeſſors, from time to time, and all times hereafter, Exerciſe and Enjoy all Pow-s and Authority in Eccleſiaſtical Affairs, as ful-and as amply as himſelf or any of his Prede-ſors have, or might have done the ſame, any ing in this Act notwithſtanding.

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3. It muſt appear upon Oath before the Juſti-s, or Confeſſion of the Parties, 1. That it was a *itious* Conventicle, met together to diſturb the ace, under pretence of Religion. 2. That the orſhip there practiſed, was *not according* to the urgy and Practice of the Church of *England*;

ſo that the Informers muſt be preſent the whole time of the Meeting: for if they only hear a man Praying or Preaching, that is not contrary to the Practice of the Church of *England*, and how does it appear that they did not read the Liturgy? 3. It muſt be proved that there were Aſſembled five Perſons or more, beſides the Inhabitants in the Houſe.

4. If a party be Fined above ten Shillings, if he pay down the Money, or it be levied within one Week after ſuch Payment or Levy, *he may Appeal* from the Juſtice Convicting, to the next Quarter-Seſſions, where he ſhall have a Tryal *by Jury* thereupon, and undoubtedly if it do not appear to the ſaid Jury that it was a *Seditious* Meeting they ought to find for the Appealer.

5. A *General* Warrant from any Juſtice or Juſtices to Conſtables, to inquire after, Seize, &c. all Conventicles in their Precincts, is not good; it ought to particularize the Houſe and Place, Houſes and Places where the Conventicle is, or Conventicles are held, and then the Conſtable ought forthwith to goe, and if he finds it ſo, to ſuppreſs it; but otherwiſe the Conſtable might be put to endleſs Vexation in hunting after Meetings to no purpoſe, whereas the Act enjoyns him no ſuch trouble; and if you go once and find no Conventicle, you are not obliged to go a *ſecond time* on the ſame Warrant, but ought to have a new one, nor is the Conſtable obliged to turn *Informer*.

6. As to *Breaking open* Doors, you ſee the Act directs that it may be done, firſt *only* in an Houſe *where* 'tis Inform'd there is actually a Conventicle as aforeſaid (that is upon the *Oaths* of two Perſons.) 2. the Conſtables, *&c.* cannot do this without firſt there be a *Demand and Denial* to enter. 3. Nor then neither without a *Warrant* from the Juſtice

ſice to that purpoſe." If a Conſtable upon a vain tale, without two perſons Swearing it, re is at ſuch a Houſe a Meeting, and with- Warrant ſhall venture to break open the Doors, there be found no Conventicle, he makes him- liable to be Indicted for *Burglary*.

7. There is no power given to break Doors for *ying* the Penalties, therefore let the Conſtables Officers be wary what they do in that Caſe.

8. Conſtables would do well to know and aſſert Dignity of their *Office*, they are not to run and down like Lacquies after the Capricio's of ry Juſtice, and ſpend the Lords day Prophane- in hunting after Meetings; if the Juſtices are on ſufficient Oath Inform'd of a Meeting, and make out a Warrant ſpecifying where it is, 'l goe, but to ramble about with them from place to that, you are not obliged; no more you to ſeize or Impriſon perſons on the verbal mmand of any Juſtice, unleſs in viſible Breach the Peace, but you muſt have a Warrant, ſpe- ying the perſons *Name* and *Offence*, before you lay hold of him, or elſe you may repent it, en ſued another day for falſe Impriſonment.

9. Since by the Statute of the 29 of *Car.* 2d. 7. It is Enacted in theſe words, "Provided alſo that no Perſon or Perſons upon the Lords day ſhall ſerve or Execute, or cauſe to be ſerved or Executed, any Writ, Proceſs, *Warrant*, Or- der, Judgment or Decree, (except in caſes of Treaſon, Felony, or Breach of the Peace) but that the ſervice of every ſuch Writ, Proceſs, War- rant, *&c.* ſhall be void to all Intents and Purpo- ſes whatſoever; and the Perſon or Perſons ſo ſerving or Executing the ſame ſhall be as lia- ble to the ſuit of the party grieved, and anſwer Damages to him for doing thereof, as if he or they had done the ſame without any Writ, Pro-

"ceſs, Warrant, Order, Judgment, or Decree "all.

It will concern all Conſtables and Officers ... conſider with what ſafety they can execute any ſuch Warrants at all on the Lords day, on peaceable Meetings, it being evident that every man they diſturb by Colour of ſuch Warrant on that day, has by this Statute a good Action againſt them:

And ſo much for Laws againſt Diſſenters.

In the next place, according to our Promiſe, we ſhall here add an Abſtract of the Laws *againſt* Popery *and* Papiſts; *and perhaps as 'tis ſaid, where there are* moſt Laws *there are* moſt Offences, *ſo here we may ſay, though there be ſuch abundance of Acts, of ſuch ſevere and various Penalties, yet there are ſcarce any ſort of Criminals more* rarely *brought to Conviction or Puniſhment.*

THE ſecond Refuſal of the Oath of *Supremacy* puniſht as *High Treaſon*, 5 *Eliz.* 1.

To maintain or Extol Authority of the See of *Rome*, the ſecond time, *High Treaſon*, 5 *Eliz.* 1.

To obtain or put in Uſe any *Bull* from *Rome*, *High Treaſon*, 13 *Eliz.* 2.

To perſwade or *Reconcile*, *OR TO BE RECONCILED* to the Roman Religion, *High Treaſon*, 23 *Eliz.* 1. & 3 *Jac.* 4.

For *Jeſuite* or *Prieſt* made by Authority from the Pope, to come into, or remain in the Kings Dominions, *High Treaſon*. 27 *Eliz.* 2.

So for remaining in a Seminary ſix Months after

Proclo-

Proclamation, and afterward Returning, *High Trea*
on, 27 *Eliz.* 2.

For Concealing of a *Bull* or other Inſtrument
from *Rome*, or reconciliation offer'd, Puniſht as
Miſpriſion of Treaſon, 13 *Eliz.* 2.

To maintain or conceal thoſe who perſwade, or
are Reconciled to the Roman Religion, *Miſpriſion*
of Treaſon, 23 *Eliz.* 1.

To Receive, Relieve, Comfort *Jeſuit* or *Prieſt*,
knowing him to be ſuch, Puniſht as *Felony*, 27
Eliz. 2.

To go and ſerve a Foreign Prince, having not
before taken the Oath of Allegiance, and entred
and *not to be Reconciled* to the Roman Religion,
Felony, 3 *Jac.* 4.

The firſt Refuſal of the Oath of Supremacy, is
Puniſht as in Caſe of a *Premunire*, which imports a
Forfeiture of all Lands and Goods, Impriſonment
for Life, and a Deprivement of the Benefit of Law,
5 *Eliz.* 1.

To ſet forth or defend Power Spiritual in the
Sea of *Rome*, *Premunire*, 5 *Eliz.* 1.

To Bring or Receive any *Agnus Dei*, Croſſes,
Pictures, or ſuch like from *Rome*, *Premunire*, 13
Eliz. 2. 23 *Eliz.* 1.

To aid any Perſon who hath put in Uſe any
Bull from the Sea of *Rome*, *Premunire*, 13 *Eliz.* 2.
23 *Eliz.* 1.

To ſend or give Relief to any continuing in *Col-*
ledges or *Seminaries* beyond Sea, *Premunire*, 27
Eliz. 2.

Refuſal of the *Oath of Allegiance* upon the ſecond
Tender, *Premunire*, 3 *Jac.* 4. & 7 *Jac.* 6.

For *not Diſcovering* of Prieſts made beyond the
Seas, *Impriſonment*, 27 *Eliz.* 2.

Upon Indictment of Recuſancy by Proclamation,
Impriſonment, 29 *Eliz.* 6.

Thoſe that are not able, or fail to pay their

Forfeitures, are to be Impriſoned until Payment or Conformity, 23 *Eliz.* 1.

Women Covert Impriſoned for Refuſal of the Oath of Allegiance, 3 *Jac.* 4.

For non-Payment of twelve pence for every Sunday, *Impriſonment*, 3 *Jac.* 4.

Women Covert Convicted for Recuſancy, Impriſoned till her Husband pay ten Pounds a Month, or a third part of his Lands, 7 *Jac.* 6.

Standing Excommunicated for Recuſancy, Houſe may be broken up for his Apprehenſion, 7 *Jac.* 6.

Thoſe who ſhall forbear to come to Church by the ſpace of twelve Months, bound to good Behaviour, with Surety in the *Kings-Bench*, 23 *Eliz.* 1.

Every Recuſant is Confin'd to five Miles Compaſs for Life, 23 *Eliz.* 2. To ten Miles diſtant from *London*, 3 *Jac.* 5.

Not to come into *the Houſe* where the King or his Heir Apparent is, 3 *Jac.* 5.

For abſence from Church-Service every Sunday twelve pence forfeited, 1 *Eliz.* 2.

And for every Holiday twelve pence forfeited, 3 *Jac.* 4.

For abſence from Common-prayer, every Month, *twenty Pounds* forfeited, 23 *Eliz.* 1. 3 *Jac.* 4.

For default of payment of twenty Pounds a Month, all Goods, two parts of Land, and Leaſes forfeited, 29 *Eliz.* 6. & 3 *Jac.* 4.

At the Kings Election to take or refuſe twenty Pounds a Month, or to take two parts of the Recuſants Eſtate, 3 *Jac.* 4.

All Copy-Hold Lands of Recuſants forfeited, 25 *Eliz.* 2.

The Forfeitures of the Anceſtor charged upon his Heir being a Recuſant, 1 *Jac.* 4.

A Recuſant forfeits for not Receiving the Sacrament according to the Service Book, the firſt year twenty Pounds, the ſecond year forty Pounds,

the

the third year and every year after ſixty Pounds, 3 *Jac.* 4.

To the Preſenter out of the Recuſants Goods forty Shillings forfeited, 3 *Jac.* 4.

For every Recuſant ſojourner and Servant, ten Pounds for every Month forfeited, 3 *Jac.* 4.

Two parts of Dower or Joynture of a Married Woman forfeited, 3 *Jac.* 5.

Coming to *Court*, an hundred Pounds forfeited, 3 *Jac.* 5.

For not Baptizing of Children according to the Service-Book publickly within a Month after their Birth, an hundred Pound forfeited, 3 *Jac.* 5.

For Marrying otherwiſe than by a Miniſter, an hundred Pounds forfeited, 3 *Jac.* 5.

For Burying out of the Church or Church-yard an hundred Pounds forfeited, 3 *Jac.* 5.

For ſending Children beyond Seas without Licenſe, an hundred Pounds forfeited, 1 *Jac.* 4.

For maintaining a School-maſter not going to Church, or allowed to teach, for every Month ten Pounds forfeited, 23 *Eliz.* 1. & 29 *Eliz.* 6.

And forty Shillings *per Diem* forfeited by the School-maſter and Recuſant that keeps him, 1 *Jac.* 4.

All Goods and Lands during Life, for Breach of Confinement forfeited, 23 *Eliz.* 2. & 3 *Jac.* 5.

The like forfeiture for going or ſending Children beyond the Seas to be Bred in Popery, 3 *Car.* 2.

For Reſiding within ten Miles of *London*, an hundred Pounds forfeited, 3 *Jac.* 5.

For Practiſing any Function expreſſed in the Statute of 3 *Jac.* 5. an hundred Pounds forfeited, 3 *Jac.* 5.

Diſabled to Reverſe Indictment for want of Form or other Defect, 3 *Jac.* 4.

Diſabled from the Practiſe of ſeveral Functions, whereby to gain their Livings, *viz.* from practiſing Com-

Common Law, Civil Law, or being a Steward, *Attorney*, Solicitor or Officer in any Court; from Practising *Physick*, or being Apothecary, and from Bearing any Office in Camp, Troop or Band of Soldiers, or in any Ship, Caſtle or Fortreſs, *&c.* 3 *Jac.* 5.

By the Wifes Recuſancy, the Husband Diſabled from Publick Office or Charge in the Common-Wealth, 3 *Jac.* 5.

By Marrying otherwiſe than the Church of *England* alloweth, the Husband diſabled to be *Tenant by Courteſie*, the Wife diſabled to have *Dower*, *Jointure*, *Free Banks*, or any part or *Portion* of her Husbands Goods, 3 *Jac.* 5.

Diſabled to Sue or Proſecute Actions, to preſent to a Benefice, to be Executor, Adminiſtrator, or Guardian, 3 *Jac.* 5.

Children ſent beyond the Seas without Licenſe, are diſabled to take Benefit of Gift, Conveyance, Deſcent or Deviſe, 1 *Jac.* 4. & 3 *Jac.* 5.

Notwithſtanding theſe Forfeitures, Recuſants are no leſs Subject to Eccleſiaſtical Sentences, 23 *Eliz.* 1. & 3 *Jac.* 45. [But Quære, Whether one Papiſt was *quâ Talis*, ever Excommunicated ſince the Kings happy Reſtauration, though many thouſand Proteſtants have been:] Refuſal to Receive the Sacrament, and take the Oaths of Supremacy and Allegiance, *Ipſo facto* diſables from any publick Truſt, 25 *Car.* 2. *ca.* 2.

Peers and Members of Parliament diſabled to Sit, untill taking of Oaths of Allegiance and Supremacy, and declaring againſt Tranſubſtantiation and the Idolatry of *Rome*, 30 *Car.* 2. Stat. 2.

Having thus Collected together divers of the moſt remarkable and advantagious of our *Laws*, whereby the *Liberties* of Engliſh-men are Guarded and Secured; ſince the beſt of Laws are but inſignificant.

ſignificant *Cyphers*, if not Honeſtly put in Execution; and ſince in the Execution of our Laws *JURIES* are mainly concern'd, who if *Ignorant* of their Duty, or *Corrupt*, or *Over-awed*, and not daring to make uſe of that juſt power, wherewith the Law hath inveſted and intruſted them, may give up all thoſe *precious Priviledges*, and ſubject us to the worſt kind of ſlavery, under pretence of Law: therefore here in the *laſt place*, for the Information of my honeſt Country-men, the *Freeholders* of *England*, and *others* who in *Corporations* are daily call'd to this important Service, I ſhall ſubjoin a brief diſcourſe of *Juries*.

SECT. I.

Of the Advantages Engliſhmen enjoy by this Trial by Juries, above any other Nation under Heaven.

THIS one of the *miſerable Follies* of depraved humane Nature, that it commonly ſleights preſent Enjoyments, and rarely rates the goodthings it poſſeſſes at their true value, till 'tis *depriv'd* of them. This grand Priviledge of *Trials per pais*, by our Countrey, that is by *JURIES*, as it ſeems to have been as *Ancient* as the Government or firſt form of *Policy* in this Iſland; for it was not unknown to the ancient *Brittains* (as appears by their Books and Monuments of Antiquity) Practiſed by the *Saxons*, [ſee King *Ethelreds* Laws in *Lambert*, p. 218. and *Coke* 1. part *Inſtit.* f. 155.] and Confirmed ſince the Invaſion of the *Normans* by *Magna Charta* as you have heard, and continual Uſage; ſo it is a thing of the *higheſt Moment* and an eſſential Felicity to all Engliſh Subjects.

For

For look abroad in *France*, *Spain*, *Italy*, or indeed (almoſt) where you will, and obſerve the miſerable Condition of the Inhabitants, either intirely ſubjected to the Arbitrary *Luſts of Tyrants*, who plunder, diſmember or ſlay them, according as the humour takes them, and many times without the leaſt provocation, meerly for *ſport*, and to Gratifie a *ſavage Cruelty*: Or at beſt, you will behold them under ſuch Laws as render their *Lives*, *Liberties* and *Eſtates* liable to be diſpoſed of at the *diſcretion* of Strangers appointed their *Judges*, moſt times *mercenary*, and Creatures of Prerogative; ſometimes malicious and *oppreſſive*, and too often partial and *corrupt*. Or ſuppoſe them never ſo juſt and upright, yet ſtill has the Subject no ſecurity againſt *ſubornations* and the attacques of malicious, falſe and unconſcionable Witneſſes; yea when there is no *ſufficient Evidence*, upon meer ſuſpicions they are obnoxious to the Tortures of the *Rack*, which often make an Innocent man Confeſs himſelf Guilty meerly to get out of preſent pain: Or if he do with invincible Courage endure the *Queſtion* (as they call thoſe Torments) he is many times ſo ſpoiled in his Limbs as he ſcarce ever is his own man again.

Whereas ſuch has been the goodneſs of God, and the prudent care of our Anceſtors, that to our ineſtimable Happineſs, we are born and live under a mild and Righteous Conſtitution, where all theſe miſchiefs may be prevented, where none can be *Legally* condemned, either by the power of Superior Enemies, or the *raſhneſs* or *Ill will* of any Judge, nor by the bold Affirmations of *prefligate Evidence*: For by a fundamental Law in our Government, No mans Life (unleſs it be in Parliament, which is a Supream Court, and 'tis ſuppoſed will never do any man wrong) ſhall be touched for any Crime whatſoever, but upon being found

found *Guilty* on two ſeveral *Trials* (for ſo may that of the Grand and Petty Jury be called) and the Judgment of twice Twelve men at leaſt, all of his own Condition and Neighbourhood, and upon their Oaths, [*Coke* 3. *part of Inſtit.* p. 40.] That is to ſay, *Twelve* or more to find the Bill of Indictment againſt him, and Twelve others to give Judgment upon the General Iſſue of *Not Guilty*: All which Jurors muſt be honeſt, ſubſtantial, Impartial men, and being Neighbours of the party accuſed, or place where the ſuppoſed Fact was committed, cannot be preſumed to be unacquainted either with the matters charged, the Priſoners courſe of Life, or the Credit of the Evidence: And all theſe muſt firſt be fully ſatisfied in their Conſciences, that he is *Guilty*, and ſo unanimouſly pronounce him upon their Oaths, or elſe he cannot be condemned. For the Office and Power of theſe Juries is *Judicial*: They only are the Judges, from whoſe ſentence the Indicted are to expect *Life* or *Death*; upon their Integrity and Underſtanding, the Lives of all that are brought into Judgment do ultimately depend; From their *Verdict* there lies no *Appeal*: By finding Guilty or Not Guilty, they do complicately reſolve both Law and Fact.

The *Judges* are made by Prerogative, and many times heretofore they have been preferred by *Corrupt Miniſters* of State, and may be ſo again in Time to come; and ſuch advanced as would ſerve to preſent Turn, not always thoſe of the moſt Integrity and Skill in the Laws: Their places are ſo Honourable and Profitable, and their Tenure ſo Tickliſh, viz. *durante beneplacito*, meerly during Pleaſure, that they lie under no ſmall Temptations, which perhaps with ſome may be never the leſs unlikely to prevail, for their having generally been wont before to take *Fees*; They are concern'd

cern'd in ſo many Cauſes, that they are the oftner ſubject to be tempted, and are ſo few that they may be the eaſier corrupted: They cannot be Challenged, and may be apt to think themſelves above any Action, and thence be encouraged to ſtrain a point now and then. The major part of them agreeing, is enough: they are never ſworn at each particular Trial, nor ever at all but once, and that exceeding generally: I ſay all theſe things may poſſibly ſometimes happen to Biaſs ſome Judges (for I intend not the leaſt Reflection hereby on any of thoſe *Honourable Perſons* who at preſent deſervedly ſupply our ſeats of Juſtice.) But nothing of that kind can reaſonably happen to a *Jury*. For, 1. They are return'd by a ſworn Officer. 2. Muſt be men of a clear Reputation, and competent Eſtate. 3. Being Neighbours, they may know ſomething of the buſineſs on their own knowledge. 4. Their Office is but a trouble, not accompanyed with any great Honour, nor any profit at all. 5. They are all ſolemnly ſworn to each particular Cauſe. 6. The party may challenge 35 in caſe of Treaſon, and 20 of them in Felony, without ſhewing any cauſe, and as many more as he can aſſign cauſe againſt. 7. Of the Grand Jury Twelve at leaſt muſt joyn in the Verdict, and of the *petty Jury* every man of the Twelve muſt conſent upon his Oath, or elſe 'tis all nothing. And laſtly, if they give a corrupt Verdict between Party and Party, they are liable to an *Attaint*. [But I do not find any Attaint lies in Criminal Cauſes, where the King is a Party.]

Now let any man of Sence conſider, whether this method be not more proper for *bolting* out the Truth, for finding out the *Guilty*, and preſerving the *Innocent*, than if the whole deciſion were left to the Examination of a Judge, or two or three, whoſe *Intereſt*, *Paſſion*, *Haſte*, or *Multiplicity* of buſi-

buſineſs may eaſily betray them into Error.

Deſervedly therefore is this Priviledge of Tryal by *Juries* rank'd amongſt the choiceſt of our Fundamental Laws, which whoſoever ſhall goe about openly to *Suppreſs*, or craftily to *Undermine*, and render only a Formality, does *Ipſo Facto* attacque the Government, and brings in an Arbitrary Power, and is an Enemy and Traitor to his King and Countrey; For which reaſon *Engliſh Parliaments* have all along been moſt Zealous for preſerving this great Jewel of Liberty, Trials by Juries, having no leſs than 58. ſeveral times ſince the *Norman* Conqueſt been eſtabliſhed and Confirmed by the Legiſlative Power, no one Priviledge beſides having been neer ſo often remembred in Parliament.

SECT. II.

What perſons ought to be Jury-men, and how Qualified.

AS the Office of Juries is of ſuch great Importance, ſo the Wiſdom of our Law has provided that the ſame ſhall be ſupplyed with Perſons of Ability, Honeſty, Integrity and Indifferency: for (as my Lord *Cook* ſaith, 1. part *Inſtit. Sect.* 234. fo. 155.) He that is of a Jury muſt be *Liber Homo*, that is, not only a *Free man*, and not Bond, but alſo one that hath ſuch *Freedome of mind*, as he ſtands indifferent, as he ſtands unſworn. 2. He muſt be *Legalis*, and by the Law every Juror that is returned for the Trial of any Iſſue or Cauſe, ought to have three properties. 1. He ought to be dwelling moſt *near* to the place where the Queſtion is moved. 2. He ought to be moſt ſufficient

ſufficient both for underſtanding and Competency of Eſtate. 3. He ought to be *leaſt Suſpicious*, that is, to be indifferent as he ſtands Unſworn, and then he is acounted in Law, *Liber & Legalis homo*, otherwiſe he may be Challenged and not ſuffered to be Sworn; but a mans being Excommunicated, (as was ſaid before) is no Barr to his being a Jury-man, much leſs his being a Diſſenter or Non-frequenter of Church Ceremonies, if he be otherwiſe qualified with Eſtate and Underſtanding; for at that rate, if Popery ſhould ever get uppermoſt, *No Proteſtant at all* would be capable of being a *Jury-Man*, becauſe a *Non-Conformiſt to Holy Church*. Now if no Statute excludes Proteſtants unconvicted of any Crime, or Diſſenters (*quâ tales*) to ſerve on Juries, I ſhould think we ought to wait at leaſt till an Act of Parliament be made to that purpoſe, before we deny them *Liberam Legem*; and to Act otherwiſe, in my ſilly Opinion ſeems not only unwarrantable, but a daring Uſurpation of Legiſlative Power: In a word, Jurors muſt be free of and from all manner of Bondage, Obligations, Affections, Relations and Prejudices; they muſt be the *Peers* or Equals of the party they are to Try; they muſt be of full Age, 21 Years old or upwards, not *Outlaw'd*, never *Attainted* or Convicted of Treaſon, Felony, Falſe Verdict, Perjury, or adjudged Infamous; they were anciently *all Knights*, as we read in *Glanvil* and *Bracton*, and they muſt ſtill be perſons of worth and repute; and as they are returned by a *Sworn* Officer, the Sheriff, ſo they of the petty Jury muſt be every one Sworn every ſeveral Trial by a particular Oath, the more to remind them of their Duty. Nay, it ſhould ſeem in ancient times, thô the Office and Duty were ſtill the ſame as at this day, yet their Honour and Dignity were much greater. *The Mirrour of Juſtices*, (a great part of which was Writ-

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ten before the Conqueſt, and augmented by *Andrew Horn*, a Learned Lawyer in the time of King *Edw.* the 2*d.*) p. 209. [in the *French*, and 153. in the *Engliſh*] makes no ſcruple to call them *JUDGES*, *Judges Ordinaries ſunt Suitors*; and Dr. *Cowel* in his Interpreter, tells us, Juries were [anciently] *Aſſociates and Aſſiſtants to the Judges of the Court in a kind of Equality, whereas now a dayes they attend them in great Humility:* And cites the Cuſtomary of *Normandy*, and *Lambert*, as being of the ſame Sentiment. Nay, many Wiſe and Learned men have wondred, that ſince the Law has conferr'd ſuch ample power on Jury-men, why they ſhould have no kind of *mark of Honour* or *Diſtinction*, as liberty to Sit with their *Hats on*, from the time they are Sworn to the Delivery of their Verdict, or the like; For as the Cuſtom is now a dayes, they ſitting amongſt the Croud with their *Caps off*, as well as the worſt *Malefactors* they are to Trye, 'tis not eaſie knowing them from the reſt of the Spectators. But this *Obiter*, I deſire not to bring in Innovations, but only that Engliſh men may preſerve their ancient undoubted Priviledges, to which purpoſe it will concern all that are liable to be Summoned to ſerve on Juries, heedfully to Inform themſelves of their *Duty and Office* by Law, that ſo they may uprightly diſcharge the ſame to God and the King, and their fellow Subjects.

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SECT. III.

Of Grand Juries, their Duty, and the great Importance of their Office.

JUries are of two sorts. 1. The Grand Jury so called, both because it consists of a greater number than *Twelve*, as commonly 21, 19, 17. or ☞ the like, [but note they can make no Verdict or Presentment, unless *Twelve at least of them agree*, and then what they do, is Valid, tho the rest do not Consent;] as also because generally they are of the greater quality, and likewise in respect of their Power, because the extent of their Office is more great and general, as extending to all Offences throughout the whole County for which they serve. 2. The *Petty Jury* (in Cases Criminal, called commonly the Jury *of Life and Death*) which always consists of Twelve men, neither more nor less, who must every Man agree, or else it is no Verdict.

The Oath of a Grand Jury-man, as I find it Inserted in the Collection, Intituled The Book of Oaths, *p.* 206. *is as follows.*

"YE shall truly inquire and due presentment
"make of all such things as you are charg-
"ed withall on the Kings behalf: The Kings
"Council, your own, and your Fellows, you shall
"well and truely keep, and in all other things
"the Truth present: So help you God, and by
"the Contents of this Book.

But

But according to modern practice, and as we find it Publiſhed in the account of the late Proceedings againſt the Right Honourable the Earl of *Shaftsbury*, ſaid to be Publiſht by his Majeſties ſpecial Command, is expreſſed ſomewhat more largely.

The Oath Adminiſtred to the Grand Jury, as follows.

"YOU ſhall diligently Inquire and true Preſentment make of all ſuch matters, Articles, and things as ſhall be given you in charge, "as of all other matters and things as ſhall come "to your knowledge touching this preſent Service, "the Kings Council, your Fellows and your own, "you ſhall keep ſecret; you ſhall preſent no perſon for Hatred or Malice, neither ſhall you "leave any one unpreſented for Fear, Favour or "Affection, for Lucre or Gain, or any hopes thereof, but in all things you ſhall preſent the truth, "the whole Truth, and nothing but the Truth, "to the beſt of your knowledge. So help you "God.

The Office of a Grand Jury, or *Grand Inqueſt*, (for by both thoſe Names 'tis promiſcuouſly call'd) is principally concern'd in two things, *Preſentments* and *Indictments*, the difference of which is thus: The *Firſt* is when the Jury themſelves of their *own knowledge* or Inquiry do take notice of ſome Crime, Offence or Nuſance, to the injury of the Publick, which they think fit ſhould be Puniſhed or removed; and in Order thereunto do give the Court notice thereof in Writing briefly and without Form, onely the Nature of the thing, and the Perſons Name, and the Place. And this is call'd a *Preſentment*, being the matter whereon to form an Indictment, from which the Preſentment differs

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in theſe two reſpects. 1. In that is always *Originally* the Act of the Grand Jury. And, 2. That is not yet drawn up *in Form*; whereas Indictments are commonly drawn up either by the Order of the Court, or at the Inſtance of ſome Proſecutor, and are brought before, and delivered unto the Grand Jury, and the Witneſſes Sworn attend them, who Examine the ſaid Witneſſes, and as they think fit, Return the Indictments indors'd either *Billa Vera*, [that is a true Bill,] or *Ignoramus*, [*We are Ignorant*] that is, we do not find the matter, or there does not appear to us ſuch ſufficient Grounds for the Accuſation, that the Perſons Life and Reputation ſhould be brought into queſtion.

From whence it appears that the end of their Office is likewiſe twofold. 1. To inquire after, and give notice of all Crimes, Offences, Nuſances, *&c.* in the County for which they Serve, which by reaſon of their Inhabitancy and Eſtates therein they are preſumed to have beſt opportunity to diſcover, and to find Bills againſt Malefactors where there are good Grounds for the ſame, that ſo they may be brought to Trial if they are forth-coming, or may be proceeded againſt to the Outlawry if they are fled, for their ſaid Offences. 2. To preſerve the Innocent from the diſgrace and hazards which ill men may deſign to bring them to, out of malice, or through ſubornation or other ſiniſter ends; for ſo tender is the Law of the Reputation and Life of a man, that it will not ſuffer the one to be ſullied, by the Parties holding up his hand at the Barr, and the other endanger'd by a Trial, untill firſt the Matter and Evidence againſt him have been ſcann'd, examined, and found by a Grand Jury upon their Oaths againſt him. Therefore you ſee by their Oaths, They are ſworn not only to Inquire, but

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diligently to inquire, not to be negligent or ſlothful, nor to take things upon truſt or hurry them over careleſly, but to weigh the Circumſtances and ſift the Witneſſes, and ſearch out the Truth of ſuch Informations as come before them, and to reject the Indictment if it be not ſufficiently proved; and if they have reaſonable Suſpicion of Malice, Subornation or wicked Deſigns againſt any mans Life or Eſtate in ſuch as offer or come to Swear to the Bill of Indictment, they are bound by Law as well as in Conſcience to uſe all diligence to diſcover the Villany; and if it appear to them (whereof they are the Legal Judges) to be a Conſpiracy or malicious Conſpiracy againſt the Accuſed, they are bound not only to reject ſuch Bill of Indictment, but forthwith to Indict all the Conſpirators with their Aſſociates and Abettors; and that this is a main part of the Grand Juries Office, appears not only from Legal reaſon, but by an expreſs Statute, *viz.* 25 *Edw.* 3, 4. and 42 *Edw.* 3, 3. which ſayes, *That for preventing Miſchiefs done by* FALSE ACCUSERS, *none ſhould be put to anſwer, unleſs it be by Indictment or Preſentment of good and lawful People of the ſame Neighbourhood where ſuch Deeds be done*, that is to ſay, by a Grand Jury.

The Grounds upon which Grand Juries are to proceed in giving their Verdicts, are either,

1. From their *own knowledge*, and ſo they may find an Indictment againſt a perſon thô there be *never a Witneſs at all* to it, and a Petty Jury may in like manner find a perſon *Guilty* of a Felony or Murder whereof he ſtands Indicted, thô *no Witneſſes* appear againſt him to prove it, and the reaſon thereof is, becauſe the Juries being always of the *Vicinage*, the Law ſuppoſes they may know the matter of their own knowledge, and therefore in all ſuch Caſes when a Jury is charged with a Priſoner

Prisoner, and after the Indictment read, Witnesses fail to appear, the Court always speaks thus to the Jury: *Gentlemen, here is* A. B. *stands Indicted of such a Crime, but here's no Witnesses come against him, so that unless on your own knowledge you know him Guilty, you must Acquit him*; and certainly if the Juries knowledge of a mans *Guilt*, is enough to *Condemn* him, I see not why their personal knowledge of a Prisoners *Innocency*, or of the Witnesses Swearing *falsely*, should not be sufficient to *Acquit* him.

2. The other ground upon which the Grand Juries are to Proceed, is *Testimony of Witnesses*, and this is call'd *EVIDENCE*, because it ought to be such as may make the matter clear, manifest, plain and *evident* to the Jury; and of this *Evidence* the Jury are the proper and *only* Judges, therefore they ought (according to their Oath) *diligently Inquire* into the Quality, Repute, and Circumstances of the Witnesses, the likelyhood of what they Depose, and whether they do not Swear out of Malice, Subornation, Self-Interest, Combination, or some ill design; which to Discover, they will do well to Examine them apart, to note their Variations and Contradictions, to ask them sudden questions, and what questions are pertinent, not the *Judges*, but the *Jury* only can determine; for they may know how to make use of them towards Discovery of the Truth, thô the Judge does not, and 'tis *They* are upon their Oaths, not he, 'tis *they* must satisfy their own Consciences, the Judge has nothiug to do to Intermeddle, he is bound by their Verdict: Let Witnesses be never so rampantly positive, yet if the Jurors have good and reasonable grounds not to believe them, they will, they must remain as Ignorant to the parties Crime as before: we find this expresly asserted for Law in our Books, as *Stiles's* Reports,

Reports, *L.* 11. thô there be Witneſſes who prove the Bill, yet the Grand Inqueſt is not bound to find it, if they ſee cauſe to the contrary, ſo *Coke L.* 6. The Judges uſe to determine *who* ſhall be Sworn, and what ſhall be produced as Evidence to the Jury, but the Jury are to conſider what Credit or Authority the ſame is worthy of. If a Grand Jury are not Judges of Evidence, they ſignifie nothing. If (as ſome would perſwade us) becauſe People Swear deſperately, thô they do not believe them, they ſhall be bound to find the Bill, then they ſignifie nothing, and are no ſecurity to preſerve Innocency. A lewd Woman once reſolv'd to Indict the then Arch-biſhop of *Canterbury* for a Rape, ſhe Swore it no doubt very heartily, according to this new Doctrine of going according to Evidence, the Jury muſt preſently have found the Bill, the Arch-biſhop muſt have been Committed to Priſon, Suſpended from Eccleſiaſtical Juriſdiction, his Goods and Chattels throughout *England* Inventoried by the Sheriffs; would it, think you, in that Caſe have been a good Excuſe for the Grand Jury, to have ſaid, that thô they believ'd in their Conſcience the Baggage ſwore falſe, yet ſhe Swearing it poſitively, they as ſo many Pariſh Clerks were but to ſay *Amen* to her Oath of the Fact, and to find *Bill a Vera* againſt that eminent Prelate? And if the Jury be Judges of the Credibility of Evidence in this Caſe, and may go contrary to it, why I pray may they not have the ſame Liberty where they find good Cauſe in others?

If an Indictment be laid againſt a man for Criminal words, ſaid to be utter'd in a Colloquium, or Diſcourſe, thô the Witneſſes roundly Swear all the expreſs words in the Indictment, yet unleſs they will Relate and ſet forth the Subſtance of the *whole talk*, 'tis impoſſible the Jury ſhould Judge

of the matter; for the *foregoing and ſubſequent* words may render Expreſſions that are Innocent and Loyal, which taken to halfs, may be rank Treaſon; as if one ſhould ſay, *To affirm the King has no more Right to the Crown of* England *than I have, (which is the Opinion of the Jeſuits, of his Majeſty, if once Excommunicated by the Pope) is deteſtable Treaſon:* And two men at ſome diſtance, not well Hearing or Remembring, or Maliciouſly deſigning againſt his Life, ſhould Swear—— That he ſaid, *The King had no more Right to the Crown than he had:* Now that the Man did utter theſe very words is true, but if you ask the Evidence the reſt of the Colloquium, they ſhall tell you there was much more Diſcourſe, but they cannot remember it; what ſatisfaction is this to a Jury? or would it not be hard for a Man to be put to hold up his Hand at the Bar under the frightful Charge of Treaſon in this Caſe? Or if a Miniſter in his Sermon ſhould Recite that of the *Pſalms, The Fool hath ſaid in his Heart there is no God:* Jeſuited Evidence now may come and Charge him with Blaſphemy, and Swear that he ſaid, *There was no God:* and ask them what Expreſſions beſides he uſed, may excuſe themſelves and ſay, 'Tis a great while agoe, we cannot remember a whole Sermon, but this we all poſitively Swear, *He ſaid there was no God.*

The Inquiry of a Grand Jury ſhould be ſuitable to their Title, a *Grand Inquiry*; elſe inſtead of ſerving their Countrey, and preſenting real Crimes, they may Oppreſs the Innocent, as in the Caſe of *Samuel Wright* and *John Good*, at a Seſſions in in the *Old Baily*, about *December* 1681. *Good* Indicts *Wright* for Treaſonable words, and Swore the words poſitively; but after a Grand Enquiry, the Grand Jury found that *Wright* only ſpoke the words as of others, thus, *They ſay ſo and ſo*——— and concluded with this ——— *They*

are Rogues for saying it; and also *Good* at last Confessed that *Wright* was his *Master*, and Corrected him for Misdemeanours, and then to be *Reveng'd* he comes and Swears against him, which he Confessed he was Instigated to by one *Powel*; so the Grand Jury finding it to be but Malice, Return'd the Bill *Ignoramus*: whereas if they had not Examin'd him strictly, they had never discover'd the Intreigue, and the Master had Causelesly been brought to great Charge, Ignominy and Hazard.

The Judicious *Dalton*, *p.* 539 says well, *No less care or Concern at all lies on the Grand Jury, than does on the Petty Jury*: People may tell you, *That you ought to find a Bill upon any probable Evidence, for 'tis but matter of Course, a Ceremony, a Business of Form, only an Accusation, the party is to come before another Jury, and there may make his Defence*: But if this were all, to what purpose have we *Grand Juries* at all? why are the wisest, best men in a County (for such they are or should be) troubled? why are they so strictly Sworn? Do not Flatter your selves, you of the Grand Jury are as much upon your Oaths as the Petty Jury, and the Life of the man against whom the Bill is brought, is in your Hands: The Lord *Cook* 3. *Instit.* 33. plainly calls the Grand Jury-men all wilfully forsworn and Perjured, if they wrongfully find an Indictment; and if in such a Case the other Jury thro Ignorance, *&c.* should find the person *Guilty* too, you are Guilty of his Blood as well as they: but suppose he get off there, do you think it nothing to Accuse a man upon your Oaths, of horrid Crimes, your very doing of which puts him, tho never so Innocent, to Disgrace, Trouble, Damage, danger of Life, and makes him liable to Outlawry, Imprisonment, and every thing but Death it self, and that too for ought you know may wrongfully be occasion'd by it, your rash Verdict gaining Credit, and giving Authority to

another Jury not to find him Guilty: for if the Petty Jury find a man Guilty never ſo unjuſtly, the Law ſuffers no Attaint or other Puniſhment to lie againſt them, for this very reaſon, becauſe another Jury, viz. the Grand Inqueſt as well as they, have found him Guilty. If a Grand Jury find a Bill wrongfully againſt a perſon, and it prove never ſo much to his damage, he has no Remedy: for being upon their Oaths, the Law will not ſuppoſe any malice. One of the Grand Jury cannot afterwards be of the petty Jury, and why? Becauſe, ſays the Law, he has once already found the party Guilty, and if he ſhould not again, he muſt perjure himſelf. From all which it appears, what a weight and ſtreſs the Law puts upon the Verdict of a Grand Jury; and 'tis remarkable too, that the Law directs them only to ſay, either, *Billa vera*, *It is true*, Or, *Ignoramus*, *We know not*; and never, *That it is not true*: Which ſhews, That if they be doubtfull, or not fully ſatisfied, The Indictment muſt be Endorſed not *Billa Vera*, We know 'tis true, but *Ignoramus*, We doubt it, We do not know it, We are not certain it be true. If they find a Bill where they ought not, they wound their own Conſciences, and do an irreparable damage to the party; but where they do not find the Bill, there is no harm done to any body, for another Indictment may be brought when there is better Evidence.

SECT. IV.

That Juries are Judges of Law in ſome reſpects as well as Fact.

AMongſt other devices to undermine the Rights and Power of Juries, and render them Inſignificant, there has an opinion been ad-

advanced, That they are only Judges of Fact, and are not at all to Conſider the Law; ſo that if a Perſon be Indicted for a Fact which really is no Crime in it ſelf by Law, but is workt up by Words of form, as *Treaſonably, Seditiouſly, &c.* if the Fact be but proved to be done, though the ſaid wicked Circumſtances do not appear, they ſhall be ſupplied by the Law, which you are not to take notice of, but find the Bill, or bring in the Perſon Guilty, and leave the Conſideration of the Caſe in Law to the Judges, whoſe buſineſs it is.——Thus ſome people argue, but this is an apparent *Trapp*, at once to Perjure Ignorant Juries, and render them ſo far from being of good uſe, as to be only Tools of Oppreſſion, to Ruine and Murder their Innocent Neighbours with the greater Formality: For though it be true, that matter of Fact is the moſt common and proper Object of a Juries determination, and matter of Law that of the Judges, yet as Law ariſes out of, and is complicated with Fact, it cannot but fall under the Juries Conſideration. *Littleton, Sect.* 368. teaches us, That the Jury may at their Election either take upon them the Knowledge of the Law, and Determine both the Fact and Law themſelves, or elſe find the matter ſpecially, and leave it to the Judges: 'Tis by applying matter of Fact and Law together, and from their due Conſideration of, and right Judgment upon both, that a Jury brings forth their Verdict. Do we not ſee in moſt General Iſſues, as upon Not Guilty pleaded in Treſpaſs, breach of the Peace, or Felony, though it be matter in Law, whether the party be a Treſpaſſer, a breaker of the Peace, or a Felon, yet the Jury do not find the Fact of the Caſe by it ſelf, leaving the Law to the Court, but find the party Guilty or Not Guilty generally; ſo that though they Anſwer not to the Queſtion ſingly, what is Law, yet they determine the Law in all matters where Iſſue is Joined. Is it not every dayes practice,

when persons are Indicted for Murther, the Jury does not only find them Guilty or Not Guilty, but many times upon hearing and weighing of Circumstances, brings them in either Guilty of the Murder, or else only of Man-slaughter, *per* misadventure, or *se defendendo*, as they see Cause? Besides, as Juries have ever been vested with such Power by Law, so to exclude them from, or Disseize of the same, were utterly to Defeat the End of their Institution. For then if a person should be Indicted for doing any Common Innocent Act, if it be but Cloathed and disguised in the Indictment with the name of Treason, or some other High Crime, and proved by Witnesses to have been done by him, the Jury though satisfied in Conscience, that the Fact is not any such offence as 'tis called, yet because (according to this fond Opinion) they have no power to Judge of Law, and the Fact charged is fully proved, they should at this Rate be bound to find him Guilty: And being so found, the Judge may pronounce Sentence against him, for he finds him a Convicted Traitor, *&c.* by his Peers: And so Juries should be made meer Properties to do the Drudgery and bear the blame of unreasonable Prosecutions. But all this is absur'd, and abhorr'd by the Wisdom, Justice and Mercy of our Laws.

In every Indictment, Information, *&c.* there are certain words of Course, called matter of form, as *Maliciously*, *Seditiously*, *with such and such an Intention*, &c. And these sometimes are raised by a Just and reasonable Implication in Law, and sometimes are thrust in meerly to raise a pretence or Colour of Crime where there is really none. So that every Jury-man ought well to understand this Distinction, where the Act or naked

naked matter of Fact charged, is in it ſelf a Crime or offence againſt Law; as killing of a Man, Levying of War againſt the King, *&c.* there the Law does in pleadings require, and will ſupply thoſe words; and if the Jury do find, and are ſatisfied, That the ſubſtance of the Charge is ſuch a Crime, and the perſon Guilty thereof, they are bound to find it, though no direct proof be made of thoſe Circumſtantials. But where the Act or matter of Fact is in it ſelf Innocent or Indifferent, there the purport of theſe Words (as that it was done *maliciouſly*, or with *ſuch* or *ſuch a deſign*) is neceſſary to be proved: For elſe there is no Crime, and conſequently no fit matter to be put to Trial. In which Caſe, the Grand Jury is bound in Conſcience and Law to return an *Ignoramus*, and a Petty Jury *Not Guilty*.

SECT. V.

That Juries are not finable, or any way to be puniſht under pretence of going contrary to Evidence, or againſt the Judges Directions.

MUch of what we have ſaid of Grand Juries, is alſo applicable to Petty Juries, ſo that we need not repeat it, only muſt Anſwer one Objection. Some Jury-men may be apt to ſay,———If we do not find according to Evidence, though we have reaſon to ſuſpect the truth of what they Swear, or if we do not find as the Judge directs, we may come into trouble, the Judge may Fine us, *&c.*———I Anſwer, this is a *vain fear*: No

Judge dare offer any such thing: you are the proper Judges of the matters before you, and your Souls are at stake, you ought to Act freely, and are not bound, though the Court demand it, to give the Reasons why you bring it in thus, or thus; for you of the Grand-Jury are sworn to the Contrary, viz. *To keep secret your fellows Counsel and your own*; and you of the Petty Jury are no way obliged to declare your motives, it may not be convenient. 'Tis a notable Case before the Chief Justice *Anderson* in Q. *Eliz.* dayes. A Man was Arraigned for murder, the Evidence was so strong that 11. of the Jury were presently for finding him Guilty, the 12th man refused, and kept them so long that they were ready to starve, and at last made them comply with him, and bring in the Prisoner not Guilty: The Judge, who had several times admonisht this Jury-man to join with his Fellows, being surprized, sent for him, discoursed him privately; to whom upon promise of Indempnity, he at last own'd that he himself was the man that did the Murder, and the Prisoner was Innocent, and that he was resolv'd not to adde Perjury and a second Murder to the first — But to satisfie you that a Jury is no way punishable for going according to their Conscience, though against seeming Evidence, and the Reasons why they are and ought not to be question'd for the same, I shall here Recite an Adjudged Case, that of *Bushel*, in the two and twentieth year of His Majesty, Reported by the Learned Sir *John Vaughan*, whose Book is Licensed by the present Lord Chancellor, the Lord Chief Justice *North*, and all the Judges then in *England*: the said Case begins *fol.* 135. and continues 150. The whole well worth Reading: but I shall only Select Certain Passages.——

The Case was this:

BUshel *and others of a Jury having at a Sessions not found* Pen *and* Mead *(Two Quakers) Guilty of a Trespass, Contempt, Unlawful Assembly and Tumult, where-*

of

of they had been Indicted, were fined forty pound a man, and committed till they should pay it. Bushel *brings his* Habeas Corpus, *and upon the Return it appeared he was Committed,* —— *For that contrary to Law, and against full and clear Evidence openly given in Court, and against the Directions of the Court in matter of Law, they had Acquitted the said* W. P. *and* W. M. *to the great Obstruction of Justice,* &c. *Which upon solemn Argument was by the Judges Resolved, to be an Insufficient Cause of fining and committing them, and they were discharged, and afterwards brought Actions for their Dammage.* The Reasons of which *Judgment* are reported by Judge *Vaughan*, and amongst them he Useth these that follow, which I shall give you in his own words.

Fol. 140. *One fault in the Return is, That the Jurors are not said to have Acquitted the persons Indicted, against full and manifest Evidence,* Corruptly, and Knowing the said Evidence to be full and manifest against the Persons Indicted; *For how manifest soever the Evidence was, if it were not manifest to them, and that they Believed it such, it was not* a Finable fault, nor Deserving Imprisonment; *Upon which Difference the Law of punishing Jurors for false Verdicts, principally Depends,*

And Fol. 141. *I would know, whether any thing be more Common, than for two men, Students, Barristers, or Judges, to deduce Contrary and opposite Conclusions out of the same Case in Law? And is there any Difference that two men should Infer distinct Conclusions from the same Testimony? is any thing more known, than that the same Author and place in that Author, is forceably urg'd to maintain contrary Conclusions, and the Decision hard which is in the Right? is any thing more frequent in the controversies of Religion, than to press the same Texts for Opposite Tenets? How then comes it to pass, that two persons may not apprehend with Reason and Honesty, what a Witness, or many say, to prove in the Understanding of one plainly one thing, but in the Apprehension of the other clearly the contrary thing? must therefore one of these Merit*

vit Fine and Impriſonment, *becauſe he doth that which he cannot otherwiſe do, preſerving his Oath and Integrity? And this is often the* Caſe *of the Judge and the Jury.*

And Fol. 142. *I conclude therefore, That this Return, charging the Priſoners to have Acquitted* P. *and* M. *againſt full and manifeſt Evidence firſt, and next without ſaying that they did* know and Believe that Evidence to be full and Manifeſt *againſt the Indicted perſons, is no* Cauſe of Fine and Impriſonment.

In the Margent of that Fol. 142. it is thus Noted: *Of this Mind were ten Judges of Eleven; the Chief Baron* Turner *gave no Opinion, becauſe not at the Argument.*

And in the ſame fol. 142. *he ſaith,* The Verdict of a Jury, and Evidence of a Witneſs, *are very* Different *things, in the Truth and Falſhood of them: a Witneſs ſwears but to what he hath* heard *or* ſeen *generally, or more largely, to what hath fallen under his Senſes: But a* Jury-man *ſwears to what he can Infer and conclude from the Teſtimony of ſuch* Witneſſes, *by the Act and force of his* Underſtanding, *to be the Fact Inquired after; which differs nothing in Reaſon, though much in the* Puniſhment, *from what a Judge, out of Various Caſes conſider'd by him, Infers to be the Law in the queſtion before him.*

If the meaning of theſe Words, finding *againſt* the Direction of the Court, *in matter of Law, be, That if the Judge having heard the Evidence given in Court (for he knows no other) ſhall tell the* Jury *upon this Evidence, the Law is for the Plaintiff, or for the Defendant, and you are under the pain of Fine and Impriſonment to find accordingly; and the Jury ought of duty ſo to do; then every man ſees, that the Jury is but a troubleſome delay, great Charge, and no uſe in determining Right and Wrong; and therefore the Tryals by them may be better Aboliſhed than continued: which were a* ſtrange new found Concluſion, *after a* Tryal ſo Celebrated for many hundred Years.

It is true, if the Jury were to have no other Evidence for the Fact, but what is Depoſed in Court, the

Judge

Judge might know their Evidence, and the Fact from it, equally as they, and so direct what the Law were in the Case; though even then the Judge *and* Jury *might honestly differ in the Result from the Evidence, as well as two Judges may, which often happens; but the Evidence which the Jury have of the Fact, is much otherwise than that. For,*

1. *Being Returned of the Vicinage where the Cause of Action ariseth, the Law supposeth them thence to have sufficient Knowledge to Try the matter in Issue (and so they must) though no Evidence were given on either side in Court; but to this Evidence the Judge is a stranger.*

2. *They may have Evidence from their own Personal Knowledge, by which they may be assured, and sometimes are, that what is deposed in Court is absolutely false: but to this the Judge is a stranger, and he knows no more of the Fact than he hath Learned in Court, and perhaps by false Depositions, and consequently knows nothing.*

3. *The Jury may know the Witnesses to be* Stigmatized, *and* Infamous, *which may be unknown to the parties, and consequently to the Court.*

Fol. 148. *To what end is the Jury to be Returned out of the Vicinage, where the Cause of Action ariseth? to what end must Hundredors be of the Jury, whom the Law supposeth to have nearer knowledge of the Fact, than those of the Vicinage in General? to what end are they Challenged so scrupulously to the Array and Poll? to what end must they have such a certain Free-hold, and be* Probi & Legales homines, *and not of Affinity with the party concern'd? to what end must they have in many Cases the View for Exacter Information chiefly? to what end must they undergo the Punishment of the Villanous Judgment, if after all this they Implicitly must give a Verdict by the Dictates and Authority of another Man, under Pains of Fines and Imprisonment, when Sworn to do it according to the best of their own Knowledge?*

A man cannot see by anothers Eye, nor hear by anothers Ear; no more can a man conclude or Infer the thing

to

to be Relieved by anothers Underſtanding or Reaſoning; and though the Verdict be right the Jury give, yet they being not aſſured that it is ſo from their own Underſtanding, are Forſworn, at leaſt in foro Conſcientiæ.

Fol. 149. *And it is Abſurd to Fine a Jury for finding againſt their Evidence, when the Judge knows but part of it; for the better and greater part of the Evidence may be wholly unknown to him, and this may happen in moſt Caſes, and often doth.*

Thus far Judge *Vaughan*, whoſe words I have faithfully Recited, and with it ſhall conclude this Subject; Recommending thoſe that would be further ſatisfied in the Law touching the Power and Duty of Juries, to thoſe two Excellent, Learned Treatiſes lately publiſhed, the one Intituled, *A Guide to Engliſh Juries*, &c. to be Sold by Mr. *Cockeril* at the Three Legs over againſt the *Stocks-Market*; the other, *The Security of Engliſh-mens Lives, or the Truſt, Power and Duty of the Grand Juries of* England, Printed for *Benj. Alſop* in the *Poultrey*; both which are extreamly well worthy of every Engliſh mans Peruſal, that is liable to be call'd to that Office.

And now I ſhall take Leave of the *Reader*, who I hope will join with me and all Engliſh Proteſtants in this Prayer:

THat Almighty God would preſerve our Religion, put a ſtop to the Growth of Popery, Confound all their Plots, Protect our preſent Gracious King, Defend us both from a Forreign Yoak and Domeſtick Slavery, but continue to us the Enjoyment of our good old Laws, *Liberties and Priviledges, and bring all thoſe to exemplary Juſtice that have or ſhall dare attempt to Subvert, Diminiſh or Undermine them.* Amen.

FINIS.